SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 21, 2005

8:30 A.M.

(PAGES 7116 THROUGH 7163)

REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
BY: Official Court Reporter 7116

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1 I N D E X
2
3 Note: Mr. Sneddon is listed as ?SN? on index.
4 Mr. Zonen is listed as ?Z? on index. Mr. Auchincloss is listed as ?A? on index.
5 Mr. Mesereau is listed as ?M? on index. Ms. Yu is listed as ?Y? on index.
6 Mr. Sanger is listed as ?SA? on index. Mr. Oxman is listed as ?O? on index.
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9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS
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11 BARRON, Brian 7120-SA (Contd.)
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Santa Maria, California
Thursday, April 21, 2005
8:30 a.m.

THE COURT: Good morning, everyone.
THE JURY: (In unison) Good morning.
COUNSEL AT COUNSEL TABLE: (In unison)
Good morning, Your Honor.
MR. SANGER: Good morning, Your Honor.
THE COURT: Mr. Sanger?
MR. SANGER: Thank you, Your Honor.
Could we please have the document screen again, please? There we go.
All right. With the Court's permission, we'll resume with Exhibit 334. And the Court may recall this is a series of a couple hundred documents and they have the Bates stamped number on the bottom, so we'll be referring to those by the MJ00 three-digit number, sometimes four-digit number.
Is that all right, Your Honor?
THE COURT: You may do so.
MR. SANGER: Thank you.

BRIAN BARRON
Having been previously sworn, resumed the stand and testified further as follows:
// 7119

CROSS-EXAMINATION (Continued)
BY MR. SANGER:
Q. And in that regard, Mr. Barron, or Officer Barron, we had gotten to this period of time, just before we stopped yesterday, where the gate log showed from 2-17 to 2-20. Do you recall that?
A. Yes.
Q. And that was not the usual mode of recording. Usually it was day by day; is that correct?
A. That's correct.
Q. All right. So I'm going to show you 149 here again. Even though we had gotten up to 2-20, I want to go back to that period for a couple of other entries, all right?
So just to remind us where we were, I have MJ00149 up on the board. And that is the one that said 2-17 through 2-20-03, correct?
A. Correct.
Q. And at the top, that had the extensive list of guests and where they were staying, correct?
A. Correct.
Q. And then it shows "CO," so it's carry-over for the Arvizo family, and then it has times out, but those times out are not necessarily coordinated with a particular day; is that correct?
A. Correct.
Q. All right. Now, I'm going to refer to 00152 7120

and put that up on the board, if I may. Shows, at the bottom, 152.
Do we have our laser pointer, by any chance?
If you have it.
152. And then up at the top there's an entry that I'm going to -- I'm going to push the wrong button. I'm sorry. There we go. Sorry. I'm going to push the -- that button. See if you can read that entry.
Do you have it there?
MS. YU: No, somebody took it out.
MR. SANGER: All right. That's all right.
Q. Are you able to read the top entry there after I stop moving it? Just a second. There we go. Can you read that entry?
A. At 3:05?
Q. Yes. Would you like to have another copy up there?
A. I think -- I believe it says Marie Nicole, Danielle, Aldo are staying upstairs theater.
Q. Okay. And this particular gate log is dated 2-18-03, correct?
A. Correct.
Q. Now, what would be the purpose of that particular entry; do you know?
A. So we would know where they were.
Q. So that would be a reference to where those particular guests were staying on that particular 7121

1 day; is that correct?
2 A. That's correct.
3 Q. So as of 3:05, those guests had decided to
4 stay in the upstairs theater, correct?
5 A. Correct.
6 Q. All right. We'll skip ahead, then, to -- I
7 don't want to get this out of order. We'll skip
8 ahead to 155. Now, I'm going to show you 155.
9 And I'll try to speak up when I come back
10 here? If anybody can't hear, raise a hand so the
11 Court and bailiff know.
12 That's for 2-19-03, correct?
13 A. Correct.
14 Q. And on this, I want to direct your attention
15 to the top part of this one. It appears to indicate
16 Hamid, a photographer.
17 A. Yes.
18 Q. Okay. And by the way, there's a column that
19 says, "CONF." What does that mean?
20 A. Confidentiality, if they need to sign one or
21 not.
22 Q. So a person who has been there doesn't have
23 to sign that agreement each time they come in,
24 correct?
25 A. Correct.
26 Q. And the agreement basically says, "I'm not
27 going to disclose private things about Mr. Jackson's
28 residence"; is that right? 7122

A. Correct.
Q. Okay. And it shows that Hamid and apparently a couple other people, a Mark Adams and a Ray Dominguez, arrived at 1620 hours, is that correct, 4:20 in the afternoon?
A. Yes.
Q. And departed at 2010 hours, which would be 8:10 in the evening, correct?
A. Yes.
Q. Now, other -- let me ask you, did you have a chance to review these logs since you testified yesterday?
A. No.
Q. All right. I'm going to show you now 157. And I think this was really the last one that we put up yesterday. And this shows -- let me back this up a little bit. 00157 is for 2-20-03, correct?
A. Correct.
Q. And this one shows that the Arvizos returned to the property at 1420 hours, or 2:20 in the afternoon, on the 20th of February, 2003, correct?
A. Yes.
Q. And it also shows that Aja Pryor and something Tucker, that's cut off there, returned at the same time?
A. Yes.
Q. So it indicated all those people came to the gate at the same minute, correct? 7123

A. Yes.
Q. And generally that would indicate they came in the same vehicle?
A. Generally, yes, it would.
Q. All right. Now, if we go to the next page, which would be 00158, which I'll put up, that shows 158 at the bottom. If we look at the top, that's also for 2-20-03, correct?
A. Yes.
Q. And you indicated there usually are three pages per day; is that right?
A. Generally, yes.
Q. Generally. So this is just another page for that same day?
A. If it's dated the same day, then yes.
Q. Yeah. And what I would like to do is direct your attention to -- see if I can get it in there so you can still read it.
If you look at the entrance for 1420 --
A. Yes.
Q. -- that's the same time that was indicated on the preceding page that the Arvizos, Aja Pryor, and Destin Tucker arrive; is that correct?
A. Yes.
Q. And here the entry indicates Jesus S., so let's start with that. That would be Jesus Salas; is that correct?
A. Correct. 7124

Q. Jesus Salas cleared Aja Pryor, Dustin Tucker, Gavin Arvizo, Star Arvizo, Davellin Arvizo to come in, correct?
A. Correct.
Q. And the purpose of that entry is what, that type of entry?
A. That type of entry is generally for, first of all, whomever's at the gate to know to let someone in if they don't have prior -- you know, if we haven't been given a list of somebody who's coming in that day, and then to let the oncoming shift know that they're there.
Q. So that would be further evidence in these logs that all of those people just mentioned, Pryor, Tucker, and three Arvizos, came back to the ranch at 1420 hours on February the 20th, correct?
A. Correct.
Q. Oh, I'm sorry, there was one other thing on that. It also looks like Shane Brando ran over somebody's foot with a cart, is that true, at about 1815 hours?
A. If that's what it says, I'm assuming it's true.
Q. And then 1924, it looks like Shane Brando hit Gavin Arvizo with a cart?
A. Yes.
Q. And then the cart was taken away, all right?
A. Yes. 7125

1 Q. Okay. So, again, somebody in security or
2 somebody on the staff, when they saw that there was
3 a safety issue, exercised supervision over guests on
4 the ranch; is that correct?
5 A. Correct.
6 Q. And it shows Gavin is Code 4, right?
7 A. Yes.
8 Q. And then it says, "Received EMT care from,"
9 what does that say, K-10 and K-13?
10 A. No, it's R-10 and R-13.
11 Q. R-10 and R-13, are those designations for
12 people that worked on the ranch?
13 A. "R" is Robert. It's a call sign over the
14 radio, so we're not using each other's name.
15 Q. So whoever it was who responded from the
16 fire department came down to give him some sort of
17 emergency care to make sure he's okay, is that
18 right?
19 A. Yes. Robert 10 gave the care. Robert 13
20 wrote it down.
21 Q. There you go. When it says, "Gavin,
22 Code 4," Code 4 means no further assistance
23 required, okay?
24 A. Yeah, he's okay.
25 Q. If you say, in police talk basically,
26 "Code 4," you mean no further assistance,
27 everything's okay?
28 A. Correct. 7126

Q. All right, good. We're going to skip ahead here to 160. I'm putting up 160. Now, that's for 2-21-03; is that correct?
A. Yes.
Q. And at the bottom, it shows, Vincent Black, yes, 22 -- I think that says 55, 2255, correct?
A. Yes.
Q. So that would indicate -- even though it's written on the bottom, it would indicate, sir, that Vincent Black arrived, had to sign an agreement, right?
A. Yes.
Q. And that he arrived at 2255 hours, correct?
A. Pull the paper down a little more.
Q. Certainly. Would you like to look at a -- would it be easier to look at a full sheet?
A. Yes, my eyes haven't adjusted from yesterday yet.
MR. SANGER: All right. May I approach, Your Honor?
THE COURT: Yes.
MR. SANGER: Excuse me. Does anybody want to see this? I'm just going to show him my copy.
MR. AUCHINCLOSS: Go ahead.
THE WITNESS: Mr. Black did need to sign a confidentiality, and he was checked in at 2255. It's on the bottom, because there's no more room for 7127

guests here.
Q. BY MR. SANGER: All right. So, the fact that it's put in the margin is of no significance other than the fact you ran out of room on the form, right?
A. Yes, and the officer didn't want to start a new sheet.
Q. For ecological reasons, I assume?
A. Sure.
Q. It says □CO□ next to the 2255, so that means Mr. Black checked in at 10:55 at night, he came through the gate at 10:55 at night, and then he stayed to the next day, correct?
A. Correct.
Q. And below it, it says Janet Arvizo, correct?
A. Correct.
Q. That tends to indicate that Janet Arvizo came in at 2255 hours as well; is that correct?
A. Yes.
Q. And she was not required to sign a confidentiality agreement?
A. No.
Q. And then she also stayed overnight that night; is that correct?
A. Yes.
Q. And if we go up here, higher on the sheet, we see among the guests who were there on this day, the 21st of February, you also had Aja Pryor, 7128

1 correct?
2 A. Yes.
3 Q. And then Destin Tucker, correct?
4 A. Yes.
5 Q. And then the Arvizo children, Gavin, Star
6 and Davellin?
7 A. Yes.
8 Q. And it shows that the Arvizos were there
9 from the night before, and they continued on to the
10 next day without checking out; is that correct?
11 A. That's correct.
12 Q. Okay. And then, of course, there are other
13 people that are listed on the list. We won't go
14 through each one. There are other guests there that
15 day?
16 A. Yes.
17 Q. All right. There you go.
18 May I approach to retrieve that?
19 THE COURT: Yes.
20 Q. BY MR. SANGER: Now, we'll go to page 164,
21 if I may. It's MJ00164. Show that. And that's for
22 February 22nd, 2003; is that correct?
23 A. Okay.
24 Q. It's hard to read. Maybe counsel would
25 agree that when you look at it closely it says the
26 22nd. If not, let me approach.
27 May I approach, Your Honor?
28 THE COURT: Yes. 7129

MR. SANGER: I'll tell you what --
MR. AUCHINCLOSS: I can't read it on mine.
MR. SANGER: Let's do this.
THE WITNESS: Is there a date on the top or just one on the bottom?
Q. BY MR. SANGER: No, there's just one on the bottom. But let me show you the -- let me show you that page.
May I approach with that page?
I'm going to show you page 00164, and ask you to take a look -- excuse me, take a look at the date at the bottom, and see if you can tell the date from that.
A. I'll agree it's the 22nd.
Q. All right. Thank you. And it would be in order, correct? There should be other pages pertaining to the 22nd in the book, correct?
A. Yes.
Q. All right. Okay. So there's the date. And I'm putting 00164 back up on the screen. And do you see there is the entries for Gavin, Star, Davellin in the guest information?
A. Yes.
Q. Okay. Gavin, it shows -- under Limo/POV, it shows #2. What does that represent to you?
A. To me that would represent he was staying in Guest Unit 2.
Q. And it shows Star Arvizo, ditto, is also in 7130

Guest Unit 2; is that correct?
A. Yes.
Q. And they were both staying overnight. They had been there and they stayed over to the next time period, to the next 24-hour period, correct?
A. Correct.
Q. If you look at Davellin, what does that say?
A. Upstairs viewing.
Q. And upstairs viewing would be the room in -- one of the rooms in the theater; is that correct?
A. Yes.
Q. So that indicates that she was staying in the upstairs viewing part of the theater; is that correct?
A. Yes.
Q. And if you look up at the third entry up there, you have Cascio, comma, Marie Nicole; is that correct?
A. Yes.
Q. And it shows that she was also staying in the upstairs viewing in the theater; is that correct?
A. Yes.
Q. All right. And she also stayed overnight, correct?
A. Yes.
Q. Okay. And down at the bottom it shows Janet Arvizo, correct? 7131

A. Correct.
Q. And it shows No. 4. Is that Guest Unit
No. 4?
A. Yes.
Q. Now, is Guest Unit No. 4 the guest unit that
Elizabeth Taylor likes to stay in when she visits?
A. I have no idea.
Q. Okay. Is it a nice guest unit?
A. Yes.
Q. And it shows Janet Arvizo was staying
overnight. She had been there at midnight, and she
was there at the next cutoff, which would be the
next midnight; is that correct?
A. Correct.
Q. Okay. We'll go to MJ00166, and that's
2-23-03; is that correct?
A. Yes.
Q. Now, on this date, we have the Arvizos shown
again as staying at the ranch; is that correct?
A. Yes.
Q. And they were all staying -- they had all
been there and they were all staying overnight as
guests again, correct?
A. Correct.
Q. And Gavin and Star are in Unit 2; is that
right?
A. Yes.
Q. Davellin's at the theater upstairs? 7132

A. Yes.
Q. And Janet is in Unit 4?
A. Yes.
Q. All right. And Marie Nicole Cascio is also in the theater upstairs, the same place as Davellin; is that correct?
A. Correct.
Q. Now, it's possible for people at Neverland to -- for guests at Neverland to request the services of staff people there; is that correct?
A. Yes.
Q. And in a sense, it's almost like a hotel as far as service is concerned; is that right?
A. That's correct.
Q. If somebody wants to call and have coffee brought to them or breakfast or anything, they can simply call and that will be done for them; is that correct?
A. Yes.
Q. If somebody wants to call and have their laundry done, for instance, if they have laundry or cleaning that needs to be done, somebody would come and pick it up and take care of it for them; is that right?
A. That's correct.
Q. If somebody wants to have a wake-up call, they can make a request for a wake-up call; is that correct? 7133

A. Yes.
Q. So I'm going to show 167 here, if I may.
167. By that I mean 00167, and the top is
2-23-03. And here this shows that a wake-up call is
requested for Unit 4 at seven o'clock in the
morning; is that correct?
A. Yes.
Q. All right. Let's skip ahead. I like to say
that. It gives everybody a false sense of progress
here. We are getting there. Skip ahead to 171, if
I may. 00171 is 2-24-03, correct?
A. Correct.
Q. Okay. Now, there's a number of entries I'd
like to -- a number of entries I'd like to focus on
here. First of all, let's look at -- Gavin and Star
Arvizo were staying in Unit 2, correct?
A. Correct.
Q. Davellin is again at the theater?
A. Correct.
Q. Janet Arvizo is in Unit 4; is that right?
A. Yes.
Q. Okay. Now, it appears that the Arvizos were
there overnight from the night before, correct?
A. Yes.
Q. And then it appears that they all left at
1634 hours, which would be 4:34 in the afternoon; is
that right?
A. Yes. 7134

Q. And then it appears that Gavin and Star and Janet came back at 2005, which would be 8:05 p.m.; correct?
A. Correct.
Q. And then they stayed overnight till the next day, right?
A. Correct.
Q. And then Davellin came back at 1855, which would be 6:55, five minutes to 7:00 in the evening, correct?
A. Yes.
Q. So it looks like they all left together, but Davellin came back a little earlier, and Janet, Star and Gavin stayed out and did something else and came back later, right?
A. Yes.
Q. All right. Now, if we look down on this sheet -- and by the way, do you know if Gavin and Star were taken to the dentist at some point?
A. I don't remember that.
Q. All right. This is not a day that you were particularly on duty, was it?
A. Which day?
Q. This day, which is 2-24-03.
A. You'd have to show me the other log.
Q. That would be 172. Let me put that up. This is 00172. And can you tell whether or not you were on duty that day? 7135

A. No. Not according to that.
Q. I'm going to put 00171 back up. And let's see if we can figure this out. It looks like from the top that the whole Arvizo family left at 1634 hours. And then if you look down at the bottom, it says, "Employee vehicle," and the second entry shows "Vinnie, Arvizos 4," correct?
A. The second entry down?
Q. Yes.
A. No, that would be on the first entry.
Frank, Vinnie.
Q. Frank and Vinnie. Okay. That's fair enough.
That says, "Frank and Vinnie, brown dually."
Was there a -- or some kind of dually. Is there a dually?
A. Yes, it's a brown dually.
Q. Okay. And a dually, as most people know here, has got dual wheels in the back of the truck?
A. Correct.
Q. It looks like they went out in a brown dually at 11:05 in the morning and got back at 3:11 in the afternoon, correct?
A. Yes.
Q. Okay. And the next entry, the one I was focusing on -- and it seems to be cut off just a little bit there. The second one says, it looks like "Vinnie," does it not? Or, "i-n-n-i-e," 7136

1 a little bit of a first letter got cut off?
2 A. Could I see your sheet? I --
3 Q. You can see mine, sure. If it's all right
4 with the Court.
5 May I approach?
6 THE COURT: Yes.
7 THE WITNESS: It doesn't look like "Vinnie"
8 to me.
9 Q. BY MR. SANGER: What does it look like?
10 A. "Chris."
11 Q. Oh, "Chris"? Okay. Anyway, you see -- I'm
12 going to move away - because I'm not supposed to
13 talk up here - so I don't have to walk back and
14 forth.
15 You see where it says, "Arvizos 4"?
16 A. Yes.
17 Q. And whatever that says before, it might be
18 "Chris," it might be anything, but whatever it is,
19 after "Arvizos 4," it then says, "Pontiac," right?
20 A. Yes.
21 Q. So somebody took a Pontiac out. Was that a
22 ranch vehicle?
23 A. I don't recall a Pontiac. It doesn't mean
24 there wasn't one. I don't recall a Pontiac.
25 Q. Do you remember Vinnie was driving a
26 Pontiac, if he brought a Pontiac to the ranch?
27 A. I have no idea.
28 Q. Did Vinnie at that time -- do you recall 7137

Vinnie having some kind of a vehicle that he brought to the ranch?
A. No, I -- I don't recall his vehicle whatsoever.
Q. Okay. You don't recall either way, whether he brought one or didn't bring one?
A. No.
Q. All right. In any event, somebody with four Arvizos took a Pontiac and left at 1634, correct?
A. Yes.
Q. If we look up at the top, that's consistent with the check-out at the gate, 1634, of the family; is that correct?
A. Correct.
Q. And then whoever that was with the Arvizos came back at 1855 hours, correct?
A. Yes.
Q. If we look up at the top, it would appear that whoever came back with that vehicle brought Davellin back; is that correct?
A. Yes.
Q. And so Janet and the boys remained out until 2005 hours, right?
A. Right.
Q. And if we look at the next entry, we've got Joe Marcus, right?
A. Right.
Q. Joe Marcus is the ranch manager; is that 7138

correct?
A. If he still is. He was at that time, I believe, yes.
Q. That's fine. As of the time, he was the ranch manager, correct?
A. Yes, he was.
Q. And do you know Joe?
A. Yes.
Q. Is he a good guy, decent guy?
A. Yes.
MR. AUCHINCLOSS: Objection; relevance.
THE COURT: Sustained.
Q. BY MR. SANGER: Okay. You get along with Joe Marcus?
A. At times.
Q. All right. At times not, I gather. All right.
A. Well, I did at the time.
Q. You did at the time?
A. At the time, yes, I did.
Q. And had Joe Marcus, to your knowledge, been at the ranch for a long time?
A. Very long.
Q. In fact, his father had been the ranch manager for the prior owner; is that right?
MR. AUCHINCLOSS: Objection; relevance.
THE COURT: Sustained.
Q. BY MR. SANGER: All right. Now, it shows 7139

Joe Marcus has -- took a gray van; is that right?
A. Yes.
Q. And was the gray van one of the ranch vehicles?
A. Yes.
Q. And it appears that he left at 1759 hours, which would be one minute to 6:00 in the evening; is that correct?
A. Correct.
Q. And then came back at 2005 hours; is that right?
A. That's right.
Q. And when you look at the -- put two and two together here, the Arvizos, Janet and the two boys, came back at that time. It would appear that they came back with Joe Marcus; is that right?
A. Yes.
Q. We'll go to 174. And 174, MJ00174, was from February the 25th, 2003; is that correct?
A. Correct.
Q. And here we see that the Arvizos, Gavin and Star, stayed overnight, correct?
A. Yes.
Q. And they were in Unit 2; is that right?
A. That's right.
Q. And then Davellin and Janet were in Unit 4; is that correct?
A. Correct. 7140

1 Q. The Arvizos, all four of them, stayed
2 overnight?
3 A. Yes.
4 Q. And then they left at 7:25 in the morning --
5 A. Yes.
6 Q. -- is that correct?
7 So at 7:25 on the morning of February 25th,
8 they leave the ranch?
9 A. Yes.
10 Q. And if you look down a little farther, it
11 says, "Vinnie," who is apparently staying in the
12 video library, he stayed overnight and he left at
13 7:25 in the morning?
14 A. Yes.
15 Q. So it looks like Vinnie and the Arvizos left
16 together at that time, correct?
17 A. They left at the same time. If they left
18 together, I don't know, but they definitely left at
19 the same time.
20 Q. All right. Now, let's go to 180. This will
21 be 00180 that I'm putting up. And this skips ahead
22 now to February the 27th, .03, correct?
23 A. Correct.
24 Q. I'm going to direct your attention in this
25 case to Frank Cascio.
26 A. Yes.
27 Q. It appears that Frank Cascio returned to the
28 ranch on February the 27th, .03, at 1735 hours or 7141

1 5:35 in the afternoon; is that correct?
2 A. Correct.
3 Q. And we'll go to 00181. 181. February 27th.
4 This is another one of those sheets that pertains to
5 the same day; is that correct?
6 A. Yes.
7 Q. And at 735 -- I'm sorry, 1735 hours, the
8 same time that was shown on the previous sheet, it
9 shows that Jesus Salas cleared Frank Cascio to come
10 on the property; is that correct?
11 A. Yes.
12 Q. That's just further indication that Frank
13 Cascio came back to the property at 1735 hours on
14 that day?
15 A. Yes.
16 Q. All right. And I'll put up 183. And this
17 is 00183 on February the 28th, .03. And directing
18 your attention to the third line down under "Guest
19 Information." It shows Frank Cascio; is that
20 correct?
21 A. Yes.
22 Q. So on February the 28th, it shows that he
23 had been on the ranch from the previous day, and
24 continued to stay on the ranch to the next day?
25 A. Yes.
26 MR. SANGER: Okay. Your Honor, I'm now,
27 with the Court's permission, going to go to Exhibit
28 335 and proceed in the same fashion. That's a 7142

couple hundred pages. So I'm going to pick out a few of those pages and make reference to the Bates stamp number, if that's all right
THE COURT: That's fine.
MR. SANGER: Thank you.
Q. Just so we're oriented here, there's the Court's Exhibit No. 335 that starts on page MJ00185, and the date on that page is March 1, 2003, correct?
A. Yes.
Q. And that was not a leap year, so February had 28 days; is that right?
A. Yes.
Q. Okay. So the next day, from the last page we showed, would be 3-1; is that right?
A. Correct.
Q. And in the back they're in these envelopes, back to back, here. I'm going to show you 186, which also says 3-1-03.
A. Yes.
Q. And it looks like somebody's trying to give February 29 days there, but tried to correct it?
A. Looks that way.
Q. And I want to focus your attention on the last line there of the guest information log where it says, "Frank Tyson," and that means that Frank was staying at the video library, and he stayed overnight; is that correct?
A. Correct. 7143

Q. And it didn't -- it didn't show that he checked out that day?
A. No, it doesn't.
Q. All right. I do see at the bottom, it says Frank/Chris took a gray van from 1:30 in the afternoon to 4:30. Is that an indication that Frank Tyson or Cascio went out with Chris?
A. Yes.
Q. Okay. There was not another Frank there at the time, that you're aware of?
A. Not that I'm aware of, no.
Q. But they came back, right?
A. Yes.
Q. And so Frank, as far as you can tell, was an overnight visitor that night as well?
A. As far as it shows. Didn't show that he left. Doesn't show that he was carried over, so very possibly.
Q. And then let's go to --
Okay, Your Honor, this is the exhibit as it exists from the way it was presented by the prosecution. This particular page does not have a Bates stamp number on the bottom. I'll show it to counsel. This does not have a Bates stamp number. It follows Bates stamp number 33673 and precedes Bates stamp number 33675.
THE COURT: I see that.
MR. SANGER: So I'm going to put that page 7144

1 up.
2 THE COURT: All right.
3 MR. SANGER: And I'm going to hope it
4 focuses. There we go.
5 Q. Okay. So no Bates stamp number, but it does
6 say 3-2. So that's March the 2nd, 2003, correct?
7 A. Yes.
8 Q. And on March the 2nd, 2003, Frank Tyson, it
9 shows, stayed overnight from the night before,
10 correct?
11 A. Excuse me, correct.
12 Q. And then it shows 1630 that he left; is that
13 right?
14 A. On -- that who left?
15 Q. Frank Tyson. Am I not reading it correctly?
16 A. I'm sorry, I was -- yes. Six --
17 Q. Let's take our time here. I'm sorry if I
18 confused you --
19 A. I apologize, I had to work last night.
20 Q. You worked last night?
21 A. Yes.
22 Q. Okay. I apologize, I'm sorry that you have
23 to be here after doing that.
24 All right. We'll try to get you through
25 this here. But take a look at it again, take your
26 time. Looks like it says, ank, a-n-k, Tyson.
27 A. Yes.
28 Q. That's Frank Tyson, right? 7145

A. Yes.
Q. And where it says 3625, are those the
phone --
A. Phone extensions.
Q. And those phone extensions are where?
A. In the video library.
Q. So it's another way of saying that's where
he was?
A. Correct.
Q. It shows he stays overnight and then it
shows 1630, it appears that he left; is that
correct?
A. To me, it looks like 20 from here.
Q. All right. Whatever it says, that would be
the time that he left, according to this log; is
that correct?
A. Correct.
Q. And down at the bottom it says, "Frank
Tyson" again, and it shows "out." That means he
took a ranch vehicle of some sort and left; is that
right?
A. It should, if it was put there.
Q. All right. And that, I think, says 1305?
A. Yes.
Q. So 1:05 in the afternoon. And then it shows
"in," meaning he came back at 3:30 in the afternoon,
right?
A. Yes. 7146

Q. All right. And it looks like at 4:30 or
4:20, whatever that says, he may have left again;
is that correct?
A. Yes.
Q. Now, there's a star next to his name, and
what does that mean?
A. Most likely that he came back and the person
at the gate didn't record the time he came in.
Q. All right.
A. But if there was a star there, most likely
whomever was at the gate knew that he was there.
Q. That he came back on the property but they
just didn't record the exact time?
A. They didn't record the exact time.
Q. If you look up above that, we see what I
think says, "n-n-i-e."
A. Yes.
Q. And that shows that probably Vinnie; is that
correct?
A. Probably.
Q. All right. Arrived at 1430 hours. It
should be 2:30 in the afternoon.
A. Yes.
Q. And that he left at 1630 hours, correct?
A. Yes.
Q. And then there's a star, indicating he came
back and somebody forgot to put it down?
A. Correct. 7147

Q. So if we put those two together, it looks like Frank Tyson and Vinnie probably left at the same time, around 4:30 in the afternoon; is that right?
A. Yes.
Q. All right. Now, we also see that the Arvizo family came back, and we have Gavin, Star, and Davellin -- whose name is now recorded as "Davida" or something; right?
A. Yes.
Q. -- and Janet all came back at about 2:30, apparently with Vinnie.
A. Yes.
Q. All right. I'm going to go to 033667, which is dated 3-3-03, correct?
A. Correct.
Q. And this shows that -- excuse me one second.
(Off-the-record discussion held at counsel table.)
Q. BY MR. SANGER: This shows -- just going down the list, on this particular date, which is 3-3-03, Vinnie was there, stayed overnight, and then he left at ten minutes after noon; is that correct?
A. Yes.
Q. It doesn't show that he came back that day?
A. No.
Q. Then you have Gavin, Star, "Davellia" and Janet Arvizo all staying overnight both from the 7148

1 night before and till the next night, right?
2 A. Correct.
3 Q. This shows both the extensions and the room
4 numbers, or the unit numbers in some cases, right?
5 A. Yes.
6 Q. So Gavin was staying in Unit 3, which is
7 Extension 20 on the phone; is that right?
8 A. Correct.
9 Q. Star was staying in Unit 4, which is
10 Extension 21, is that correct?
11 A. Correct.
12 Q. We'll skip one there and go to Janet Arvizo
13 was staying in Unit 4, also at Extension 21, also?
14 A. Yes.
15 Q. Now, Davellin was staying -- first it said
16 Extension 3. I'm sorry, it said, □Unit 3.□ That's
17 scratched out and it says, □Extension 50□; is that
18 correct?
19 A. Yes.
20 Q. And Extension 50 is out at the theater; is
21 that right?
22 A. Been a while. I -- I know 48 is. So it
23 could be, yes. I don't remember which one 50 was
24 at.
25 Q. But in any event, wherever 50 is, it's not
26 one of the guest units?
27 A. No.
28 Q. So it's someplace else on the ranch, right? 7149

A. Yes.
Q. And that shows that she was staying at whatever room was associated with Extension 50; is that correct?
A. Yes.
Q. All right. Now, there are also -- and throughout, we've been not commenting on everybody who was staying there, but if you look down at the bottom there, it says Rio and Simone.
A. Yes.
Q. And you know who they are?
A. Yes.
Q. Does it appear that Rio and Simone arrived at about eight o'clock at night on the 3rd of March?
A. Yes.
Q. And then they stayed overnight; is that right?
A. Correct.
Q. And who are Rio and Simone?
A. They are cousins, I believe, of Mr. Jackson.
Q. Okay. And I'm going to go to 189. 00189, and that's for 3-4-03; is that correct?
A. Correct.
Q. And on 3-4-03, we have Gavin and Star up at the top, staying overnight?
A. Yes.
Q. From overnight to overnight, there's no check-out time; correct? 7150

A. Yes. Well, they were there overnight.
Q. Yeah.
A. At least one night.
Q. All right. In other words, it doesn't show that they left. Usually you'd show carry-over for "out," but it just didn't show that, so you don't know. We'll look at the next day.
A. Yes.
Q. All right. The best way to do it. And look at the next day and see if they're still there, right?
A. That would be the best way.
Q. In any event, they're at 20 and 21. So those are guest units, right?
A. Yes.
Q. And then we have Davellin, and she was staying at that Extension 50, wherever that is, right?
A. Yes.
Q. That's somewhere other than the guest units and it may be the theater?
A. I believe it's one of the rooms in -- there's two bedrooms in the theater.
Q. All right. And the other bedroom in the theater is 51, is it not?
A. I believe so.
Q. All right. So it shows that she was there from overnight; is that right? 7151

A. Yes.
Q. And then it shows that she went out at 2:25 in the afternoon, right?
A. Yes.
Q. And came back at 6:01 in the evening?
A. Yes.
Q. And it appears, if we do some detective work there, down at the bottom, Chris Carter took the gray van out and apparently was driving -- was the driver of the van, and drove her out at 1425 and back at 1801, the same times; is that correct?
A. Yes.
Q. And then Rio and Simone were also on the ranch; is that correct?
A. Correct.
Q. And it looks like they had been staying overnight, right?
A. Right.
Q. And that they went out with Davellin driven by Chris Carter at 1425 and came back at 1801, at the same time; is that right?
A. Yes.
Q. And it looks like Rio was staying in the same room as Gavin; is that correct?
A. Yes.
Q. All right. So that's 3-4, and now they're -- we're going to go to -- we're going to go to 191. 7152

Just for the record, Your Honor, it's not a big thing, but it's just a thing. As I'm paging through here, I'm seeing that these are a little bit out of order. It goes from 188 to 193 to 191 in the exhibit book. I don't know that there's any significance, but I just --

THE COURT: It's the same in my copy.

MR. SANGER: That's fine.

Q. So we go to 191, and that shows for 3-5, March the 5th, 2003, correct?

A. Yes.

Q. And here we show, once again, Gavin in 20, guest unit?

A. Yes.

Q. Star, guest unit?

A. Yes.

Q. Both there from overnight, and no indication that they left; is that correct?

A. Correct.

Q. We have Davellin -- and I'll persist in saying □Davellin,□ even though it's spelled countless ways in these logs; is that all right?

A. That's fine.

Q. You knew eventually her name was Davellin, is that correct?

A. Yes.

Q. So we have Davellin again at 50, which is apparently in the theater; is that right? 7153

A. Yes.
Q. And she stayed overnight, or she had been staying overnight, and there's no indication she checked out; is that right?
A. Correct.
Q. And then you have Janet, who's staying in one of the guest units; is that correct?
A. Yes.
Q. And again, she was staying from overnight and there's no indication that she checked out, correct?
A. Correct.
Q. And then you have Rio, who is apparently staying in the same guest unit as Gavin; is that correct?
A. Correct.
Q. And Rio was there from overnight, and on this date, March the 5th, it appears that both Rio and Simone left about 7:30 in the evening; is that correct?
A. Yes.
Q. Okay. Let's go to 195. Showing MJ00195. That's for 3-6-03; is that correct?
A. Yes.
Q. Here we show Janet Arvizo is now in Unit 4, which is Extension 21, correct?
A. Correct.
Q. And she had been staying overnight? 7154

A. Yes.
Q. And then we have Davellin, who's in Unit 3.
She had been staying overnight, correct?
A. Yes.
Q. And in fact, Gavin and Star are also shown
in Unit 3, staying overnight; is that correct?
A. Correct.
Q. I'll put up MJ00198, which is for March the
7th, so once again the next day. And let's take the
easy ones first. We have Gavin, Star and Davellin
Arvizo, they show they're in Unit 3, which is
Extension No. 20, right?
A. Yes.
Q. And that they were there overnight, and they
continued to remain overnight, correct?
A. Correct.
Q. Then you have Janet Arvizo, who was logged
in for Unit 4. It's crossed out. Do you have any
idea why it was crossed out?
A. No.
Q. And then there's a star and a star; is that
correct?
A. Correct.
Q. And what does the star tend to mean?
A. Generally it means there was no time given,
written in, no time given written out, so it wasn't
written out. The fact that it's crossed out can
mean that she wasn't there. I don't know. 7155

Q. It shows she was there the day before?
A. Yes.
Q. All right. And then if we look here, we see that Frank and Vinnie -- it says, "Vinnie Black." That's the same Vinnie. There was one Frank and one Vinnie throughout this, right?
A. Yes.
Q. So Frank and Vinnie, if I may use the first names, are staying in the video library, and they were there at the beginning of the day, at midnight, and they were there at midnight the next --
A. Next day, yes.
Q. Next day, right?
A. Yes.
Q. Okay. Now we go to 2001. 2001, I'm sorry. Too many numbers. Sorry. 00201, which is 3-8 of .03, correct?
A. Correct.
Q. The next day. And on that day, the logs show that we have Gavin, Star, and Davellin as well as Frank and Vinnie all there the entire 24-hour period?
A. Correct.
Q. So they didn't come; they didn't go. All right.
Now we go to -- oops. Again, these seem to be a little bit out of order. 204 comes before 203. But in any event, I'm going to put 204 up, which is 7156

3-9-03. So that's the next day.
A. Yes.
Q. And on this day we have Gavin, Star,
Davellin, all there the entire time, correct?
A. Correct.
Q. And then you have Frank and Vinnie, who were
there from the night before, and they seem to leave
at about 3:43 in the afternoon, correct?
A. Correct.
Q. And then they come back at -- the two of
them come back at the same time, at about 8:43 at
night, correct?
A. Yes.
Q. And then they stay overnight; is that right?
A. Yes.
Q. We also on that day have other guests of
course, but we have Rio and Simone arriving at ten
minutes after noon, correct?
A. Yes.
Q. And then they stayed overnight?
A. Yes.
MR. SANGER: Now, may I approach the witness
with the book?
THE COURT: Yes.
MR. SANGER: Let me put that page back
first.
Let me just say it out loud if I'm going to
say it to the prosecutor. What I'm going to show 7157

the witness, keeping the pages in order and hoping not to trip and drop them all over the place, we have page 203 and then we have page 33697, and then there's page 121, which is followed by page 33698, and I want to ask the witness if that page, 121, belongs in the sequence here. And that's what I intended to approach him to do, if that's all right with the Court. And that gives counsel an idea of why I'm doing it.

MR. AUCHINCLOSS: Sure.

THE COURT: All right.

MR. SANGER: Thank you.

Q. Okay. Now, I'm not supposed to talk up here, but I just want to tell you this. Obviously these pages, we're going to keep them in the same order. It's just too hard to put them back in the binder as we went along.

Here we have page 121 and I'm going to ask you if that belongs in that particular position, and I'm going to ask you to take a look towards the beginning of the book. And I'll try to give you a better indication, when I get back to my book, as to where that page may have come from.

MR. AUCHINCLOSS: Can I just interrupt?

(Off-the-record discussion held at counsel table.)

MR. SANGER: I don't think this is the biggest thing in the world, but if you look at 121 7158

that's in the book right there where you're looking at it --
A. Yes.
Q. -- does that appear to be in the correct sequence? Forget about the numbers at the bottom.
A. Right.
Q. That will just confuse us for the moment.
A. This looks like one of the pages that we looked at yesterday.
Q. In fact, if you look back to -- hesitant to have you flip that because it might fall apart.
A. I'll do my best.
Q. If you look back at Exhibit 334, and now look at the bottom --
A. Any idea how far back that is?
Q. 334 is just --
Okay. May I approach again? It might be --
THE COURT: Yes. He's referring to an exhibit number, not the page numbers now.
THE WITNESS: Oh, I'm sorry. I'm sorry.
Q. BY MR. SANGER: No, no, it's not your fault.
Okay. There's Exhibit 334, and now -- if I may, I'll just speak here briefly -- if we look at the bottom, and you flip forward to 121, which is MJ00121, does that look like that's the same page?
A. Yes.
Q. All right. And -- all right. May I have the book back? 7159

Do you want to look at it, Counsel?
Okay. Thank you.
And -- okay. And this is just the way the exhibit is, so we have to leave the exhibit the same way here. I'm now going to put this copy of 121 up on the board, just so we're all oriented.
There's no date on it; is that correct?
A. Correct.
Q. And you've gone back and you've seen -- this is a second copy of a page we looked at yesterday; is that right?
A. That's right.
Q. And that was really the page from February the 8th of 2003 -- oops, let me make sure I said that right. I'm sorry, February the 7th of 2003, correct, when CBS Entertainment was at the ranch with Ed Bradley and Jack Sussman, and so on?
A. I don't know from yesterday, but if that's the date that it says on the paper, then that's the day that it was from.
Q. I will represent that's in between the pages for February the 7th in Exhibit 334.
A. Yes.
Q. All right? Okay. So that has nothing to do with the current sequence then, in March. All right?
A. Correct.
Q. Now, on -- on the -- 7160

MR. AUCHINCLOSS: Counsel?
MR. SANGER: Yeah.
MR. AUCHINCLOSS: Just for point of reference -- it's between the 7th and the 9th. So it's not keyed to the 7th.
MR. SANGER: Counsel is saying it's between the 7th and the 9th. Suffice it to say it's in the book in February and we can let the exhibit speak for itself. It doesn't have a date on it.
Is that all right, Your Honor?
THE COURT: Yes.
MR. SANGER: All right. Thank you.
Q. Now, for this particular time period --
THE COURT: For a minute I thought the clock was going backwards.
(Laughter.)
THE COURT: Go ahead.
MR. SANGER: We'd like to start with February 7th, if we could, please.
THE COURT: All right.
MR. SANGER: And do it all over again.
THE WITNESS: No, we wouldn't.
Q. BY MR. SANGER: No, we wouldn't. I think we all agree with that.
We are almost through, which is always a terrible thing to hear from a lawyer. But I think it's true in this case.
All right. I'm going to show you now 7161

033698. We're back on Exhibit 335, okay? So we're going to put this up. Now, I will represent to you, and counsel can disagree if he wants, there does not appear to be the regular guest information page for --

MR. SNEDDON: Can't see it.

MR. SANGER: I know. It will focus in a moment.

Q. There does not appear to be the regular guest information page on March the 10th in this set where it lists who's staying at the ranch.

A. Okay.

Q. I'll just represent that. And this -- I'm hoping while I'm talking it's going to focus. There we go. Okay. But this appears to be one of the other pages for March the 10th, 2003; is that correct?

A. Yes.

THE COURT: Can we take a break here?

MR. SANGER: Fine.

(Recess taken.)

--o0o--

REPORTER'S CERTIFICATE

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304, Official Court Reporter, do hereby certify:

That the foregoing pages 7119 through 7162 contain a true and correct transcript of the proceedings had in the within and above-entitled matter as by me taken down in shorthand writing at said proceedings on April 21, 2005, and thereafter reduced to typewriting by computer-aided transcription under my direction.

DATED: Santa Maria, California, April 21, 2005.

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 21, 2005

8:30 A.M.

(PAGES 7164 THROUGH 7325)

REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
BY: Official Court Reporter 7164

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1 I N D E X
2
3 Note: Mr. Sneddon is listed as ?SN? on index.
4 Mr. Zonen is listed as ?Z? on index. Mr. Auchincloss is listed as ?A? on index.
5 Mr. Mesereau is listed as ?M? on index. Ms. Yu is listed as ?Y? on index.
6 Mr. Sanger is listed as ?SA? on index. Mr. Oxman is listed as ?O? on index.
7
8
9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS
10
11 BARRON, Brian 7174-A 7195-SA
12 7209-A 7211-SA (Further) (Further)
13 7213-A
14 (Further)
15 CLEAVES, Stephen 7214-SN 7218-SA
16 SUTCLIFFE, Timothy 7223-SN 7226-SA 7229-SN (Re-called)
17 ROONEY, Timothy 7232-SN 7235-SA
18 MOELLER, Steven 7238-SN 7246-SA
19 KLAPAKIS, Jeff 7250-A
20 (Re-called)
21
22 MONTGOMERY, Examination by The Court - Page 7317 Cynthia C.
23 (Nonjury)
24
25
26
27
28 7166

THE COURT: Counsel?
MR. SANGER: Your Honor, could we have the screen, please?
Q. Where we left off was MJ0033698 is the identifying number on the bottom, and on the top it says, 3-10-03.
And what I'm going to do, with the Court's permission, is I'm going to put this back in the book where it was and approach the witness, if I may.
THE COURT: All right.
MR. SANGER: I had time during the break to put all the pages back in the clamps so they won't fall all over the place.
And before I get up, what I'm going to do -- ask you to do, we had established that this page, 33698, with Jack Sussman on the top, was out of order, and that was really from February, right?
A. Right.
Q. I'm going to give you the book -- we have to leave it the way it was anyway. I'm going to give you the book here, and I'm going to ask you to look in this time period, and see if you have the guest information page for March the 10th, 2003, or if that page seems to be missing from this, all right?
A. All right.
Q. And you're welcome to flip back and forth, do whatever you want, and then we'll -- I'm not 7167

going to ask you to look through the entire book,
but in the general vicinity.
A. In the general vicinity after it, I don't
see it.
Q. Look before.
A. I don't see it.
MR. SANGER: May I approach?
THE COURT: Yes.
MR. SANGER: Thank you.
Thank you, sir.
THE WITNESS: Uh-huh.
Q. BY MR. SANGER: Okay. So that brings us
back to putting that same page back up, which is
033698, all right? And we looked at that and that
does appear to be from the 10th; is that correct?
A. Correct.
Q. But since the guest information log page is
not there, I'm going to ask you to take a look at
this, which is part of the gate activity log. And
at 2145 hours, there's an indication there that
Janet Arvizo did not return with Vinnie and Gavin.
Do you see that?
A. Yes.
Q. All right. So trying to fill in the gaps on
a page that's missing, it appears, from that entry,
that Vinnie and Gavin Arvizo came back to the ranch
at 2145 hours, correct?
A. Yes. 7168

1 Q. And that Janet Arvizo did not come back at
2 that time?
3 A. Correct.
4 Q. And we can't tell from that anything about
5 Star and Davellin, but at least we can tell that
6 much, correct?
7 A. Correct.
8 Q. All right. And by the way, the -- just to
9 save some time here, I'll put that same page back up
10 again.
11 When these -- when these entries are made on
12 this page, they are made contemporaneously with the
13 event that's occurring; is that correct?
14 A. Correct.
15 Q. So when it says "Time" there, "2145," that
16 would be the time the gate officer noted that Vinnie
17 and Gavin had returned; is that correct?
18 A. According to this, it would be that Janet
19 did not return with --
20 Q. With them.
21 A. -- Vinnie and Gavin.
22 Q. So Vinnie and Gavin returned, Janet's not in
23 the car or whatever, and that would have been at
24 2145 hours, correct?
25 A. Yes.
26 Q. Okay. Now, having said that, let's go to
27 0033701, which is for March the 11th, the next day.
28 And here we have Gavin, Star, and Davellin, whose 7169

1 name is yet spelled a different way, all staying in
2 Unit 3; is that correct?
3 A. Yes.
4 Q. All right. And it looks like they were
5 there overnight from the night before, correct?
6 A. Yes.
7 Q. And then it appears that they all left at
8 1645 hours?
9 A. Yes.
10 Q. To go someplace off the ranch, correct?
11 A. Yes.
12 Q. And they came back at 1829 hours, correct?
13 A. Correct.
14 Q. So they returned to the ranch at that point
15 and there's no indication that they left again, so
16 you would assume they were there again overnight; is
17 that correct?
18 A. Correct.
19 Q. If you look down at the bottom of that page,
20 it appears that Chris Carter checked out the gray
21 van, correct?
22 A. Correct.
23 Q. And he was out and in earlier in the
24 morning, but if you look at the last two entries
25 there, he left at 1645 hours, and he came back at
26 1829 hours, correct?
27 A. Correct.
28 Q. So it appears that he gave a ride to the 7170

Arvizos?
A. Yes.
Q. All right. And then we'll go to the next page. Excuse me.
And, Your Honor, this page, for the record, in the book is the next exhibit page to Exhibit 30 -- or, I'm sorry, 335. It's the next exhibit page following MJ033701. The number seems to be cut off at the bottom. I take it it's the same way in the Court's book.
THE COURT: Yes.
MR. SANGER: So I'm referring to the numberless page.
THE COURT: You can see half of it, can't you?
MR. SANGER: Well, that's an optimistic view of this. Let's see if we can get this to focus. That's all I can see on mine. Is that what the Court is seeing in your book?
THE COURT: Mine's a little clearer.
MR. SANGER: The next page is about half. I'm wondering if we're looking at the same page.
THE COURT: 702.
MR. SANGER: I believe that's the next page, Your Honor. This is -- well, I don't want to argue with the Court. I don't know what you're looking at, but that's what we have, and it's the same in my copy that was given to us by the government. 7171

THE COURT: Okay. It is a different page.
I don't have the beginning page --
MR. SANGER: All right.
THE COURT: -- which is all right. That's
the official exhibit book. So you go ahead with
it.
MR. SANGER: All right. So in the official
exhibit book, this follows MJ033701 and there's just
the very top of a number there.
Q. And what it is, for the record, is the gate
activity log for 3-11-03, correct?
A. Correct. I'm sorry.
Q. I'm sorry. I was talking to the Court, and
now I'm talking to you, so, all right.
It's a little hard to read there, but -- and
I'm happy to bring it to you to look at. But it
does appear that on the third line down, it says
C/O.
A. Yes.
Q. And that would, again, be continued from the
night before; is that right?
A. That's right.
Q. And it says Janet Arvizo did not return with
Vinnie and Gavin; is that correct?
A. Correct.
Q. So it's another notation in the logbook for
the next day that from overnight from the day
before, Janet Arvizo did not return; is that right? 7172

A. That's -- it's just to let the next shift know that that was written on the page before.
Q. All right.
A. Or the day before.
Q. Okay. Now I'm going to go to MJ033703, and this is the last page that I'm going to show you.
A. Excellent.
Q. Sigh of relief that caused a veritable windstorm up here by the podium.
Okay. That's not going to focus. There we go. Okay. MJ033703, this is on March the 12th, 2003, the next day?
A. Yes.
Q. All right. And on this day, we see Gavin, Star, and Davellin, and it shows that they stayed in Unit 3; is that correct?
A. That's correct.
Q. And that they had been there overnight, correct?
A. Yes.
Q. And it shows at 12:15, or 15 minutes after noon on that day, March 12th, 2003, that they left; is that correct?
A. Yes.
Q. And it shows further that -- if you look there, it says, "Frank, video library," stayed overnight, in essence, and "stayed overnight."
And right below that it says, "Vinnie, video 7173

1 library. He was there from the night before. And
2 it shows at 12:15 he apparently left at the same
3 time as Gavin, Star, and Davellin, correct?
4 A. Correct.
5 Q. And he was gone from the ranch from 15
6 minutes after noon until 7:49 at night, when he
7 returned to the ranch --
8 A. Yes.
9 Q. -- correct?
10 And then he stayed overnight following that;
11 is that correct?
12 A. Correct.
13 MR. SANGER: And I have no further
14 questions.
15 Do you want this book here?
16 MR. AUCHINCLOSS: Yes, please.
17
18 REDIRECT EXAMINATION
19 BY MR. AUCHINCLOSS:
20 Q. All right. Good morning, Mr. Barron.
21 A. Good morning.
22 Q. Unfortunately I'm going to have to return to
23 these records, but I'm going to give us a little bit
24 of a break, ask you a few questions beforehand.
25 A. Certainly.
26 Q. Mr. Sanger asked you about the intruders on
27 the ranch.
28 A. Yes. 7174

Q. Can you characterize what -- any generalities concerning what type of intruders they would be? What would their purpose be to try and get onto the ranch?
MR. SANGER: I'm going to object. That's vague.
MR. AUCHINCLOSS: I'll begin by asking you a foundational question. I'll withdraw that question.
Q. Was there anything that these individuals had in common, any generalities you could make in terms of their motive to be on that property?
A. Yes.
Q. What was that?
A. To see Mr. Jackson in the ranch.
Q. So these were fans?
A. Yes.
Q. Predominantly not physically threatening to Mr. Jackson?
MR. SANGER: I object. Calls for speculation and leading.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Did these fans, in your opinion as a security guard and based on your observations of them, appear to present any physical threat to Mr. Jackson, in general?
MR. SANGER: Objection; lack of foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Did you see these 7175

1 intruders on the ranch on occasion?
2 A. Yes.
3 Q. How many occasions?
4 A. Several. Not many came on the ranch while I
5 was working.
6 Q. During the five years you were there?
7 A. Yes. We did have --
8 MR. SANGER: Objection, Your Honor. The
9 witness is trying to answer the question.
10 Q. BY MR. AUCHINCLOSS: How many were there?
11 MR. SANGER: Excuse me.
12 THE COURT: I think the last question was,
13 "During the five years you were there?" Answer,
14 "Yes, we did have...," and then you were
15 interrupted.
16 THE WITNESS: We did have intruders
17 throughout my working there. When I was working, at
18 the times that I was working, maybe a handful, five
19 to ten.
20 Q. BY MR. AUCHINCLOSS: Okay. And in terms
21 of -- in terms of staying on top of the potential
22 security threat from fans entering the ranch, were
23 you generally apprised when other intruders entered
24 the property when you weren't there?
25 A. Yes.
26 Q. So this was part of your job as a security
27 officer to be aware of who might want to get on the
28 property? 7176

A. Yes.
Q. All right. And during the course of your employment during this five-year period, can you state whether or not these intruders in general appeared to present any physical threat to Mr. Jackson?
A. In general, not much physical threat. There were a few, a couple, that we felt could. Maybe not to him, but we were not just there to protect him. I mean, there was lots of other people on the ranch.
Q. Okay. And what do you mean when you say they might not present a threat to Mr. Jackson, but might present a threat to someone else?
A. For the most part, if Mr. Jackson was inside a building, he would be fairly secure.
Q. Uh-huh.
A. We didn't have a dozen security guards to post at every door or anywhere -- I mean everywhere that we could possibly have an intruder on the ranch. But there were -- there were a few that we were concerned with when they were seen in the area or did happen to get on the ranch.
Q. Okay. In terms of Frank Cascio, you've testified that you've seen him with Mr. Jackson about 75 to 100 times. He's visited the ranch over 100 times. Is that accurate?
A. Absolutely.
Q. Are there any guests that you're aware of 7177

that you would say had visited Mr. Jackson on more occasions than Mr. Cascio?
A. Possibly Miko Brando and his family.
Q. Okay. Anybody else?
A. I can't think of any right off the top of my head.
Q. And would Mr. Cascio typically be on the property -- well, let me strike that.
Would Mr. Cascio always be on the property when his siblings were with him?
A. Not always. But most of the time.
Q. Who is Miko Brando?
A. Marlon Brando's son.
Q. In terms of his relationship with Jackson, is he an employee?
A. I think so. I don't know. I'm sure -- I know that they're friends. I don't know for certain if he is employed by Mr. Jackson.
Q. Okay. You said that you were certain that Janet Arvizo had access to the house. Did you ever see her in the house?
A. No.
Q. Do you have any personal knowledge to base that statement on?
A. She was a guest. Her children had access to the house. I would just, as a security guard at that time, put two and two together and say she had access to the house. 7178

Q. So that's an assumption?
A. Yes.
MR. SANGER: Objection. Leading;
argumentative.
THE COURT: Overruled.
Q. BY MR. AUCHINCLOSS: You testified that
typically, ideally I should say, that you would be
notified when guests would be leaving Neverland?
A. Ideally, yes.
Q. Would that -- and that would include
children as well as adults?
A. Yes.
Q. And that rule was -- is it fair to say that
that rule was -- generally was not really enforced
or followed very often?
MR. SANGER: I will object, Your Honor.
First of all, it's vague. And secondly, if it
wasn't vague, it would be leading.
MR. AUCHINCLOSS: Well, I'll strike the
question and ask another one.
Q. Can you tell me whether that rule was
followed or not?
A. Not often.
Q. In terms of being allowed off the property,
you talked a little bit about children, whether or
not they'd be allowed off the property.
If a 16-year-old walked up to the gate and
said, "I want to take a walk down the road," would 7179

you allow them to do so?
MR. SANGER: Objection. Calls for
speculation; incomplete hypothetical.
THE COURT: Overruled.
You may answer.
THE WITNESS: If they wanted to take a walk
down the street?
Q. BY MR. AUCHINCLOSS: Yeah.
A. I don't see why not.
Q. So you wouldn't question their leaving,
exiting the ranch for purposes of taking a walk?
A. No.
Q. And as far as ATV use, you said those were
not allowed off the property?
A. That's correct.
Q. So if -- did that rule apply to adults as
well as children?
A. Anyone.
Q. Anyone. Okay.
A. Yes.
Q. So if Chris Tucker drove up on an ATV, on
one of these quads, you'd say, "Sorry, you can't go
off the property"?
A. Correct.
MR. SANGER: Objection. Calls for
speculation and relevance.
THE COURT: Overruled. The answer was,
"Correct." Next question. 7180

Q. BY MR. AUCHINCLOSS: Neverland Ranch, is that in the County of Santa Barbara?
A. Yes.
Q. Now, as far as having access to Mr. Jackson, the employees having access to Mr. Jackson, can you characterize for me the degree with which he valued his privacy on the ranch?
A. In my opinion, his privacy was most important on the ranch.
Q. Okay. So why do you say that?
A. He never specifically told me that his -- that he wanted his privacy, but that's what we were there for was to help him have his privacy on the ranch.
I tried to impose on him as little as possible, only if needed be. And that was something that I was taught as I was trained at the ranch, to let him have his own time. And if we needed to speak to him, we would. If not, we wouldn't. We'd pass it through a chain of command.
Q. Okay. So if Mr. Jackson was, let's say, in the dance studio --
A. Yes.
Q. -- and you knew he was in the dance studio --
A. Yes.
Q. -- would you avoid that area; I mean, let him kind of have his space there? 7181

A. Yes.
MR. SANGER: Wait a second. I'm going to object. I'm sorry. Move to strike the answer. For purpose of objecting, the question was vague and compound.
THE COURT: Overruled.
Q. BY MR. AUCHINCLOSS: Were you encouraged or discouraged in engaging with guests in conversations?
A. Discouraged.
Q. Discouraged?
A. Yes.
Q. What about privacy for the guests?
A. Same as Mr. Jackson.
Q. Were you aware that Mr. Jackson -- were you ever aware that Mr. Jackson would have young boys sleep in his room with him?
MR. SANGER: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: You mentioned that you were -- you would report something illegal if you saw it?
A. Yes.
Q. Were you allowed into Mr. Jackson's bedroom when he had guests in there?
A. No.
Q. Do you know of any employees that were allowed access into his bedroom to see what was 7182

going on in there when he had guests in there?
MR. SANGER: Objection; foundation.
THE COURT: Overruled.
You may answer.
THE WITNESS: I know that Joe Marcus had
access to his room. Or the house manager, whomever
that was at the time. Whether or not they were
allowed to go in when he had guests in his room, I
don't know.
Q. BY MR. AUCHINCLOSS: You just know that he
had the key, the code; is that what you're saying?
Or you tell me.
MR. SANGER: Objection; leading.
THE COURT: Overruled.
You may answer.
THE WITNESS: I know that Joe Marcus was able
to get into the -- Mr. Jackson's room. Whether he
had a key or had the key pad, I would assume he had
both.
Q. BY MR. AUCHINCLOSS: Who did Joe Marcus
report to?
A. Mr. Jackson.
Q. Directly?
A. I believe so, yes.
Q. Okay. Anybody outrank Joe Marcus on the
ranch?
A. When he was ranch manager, no.
Q. Okay. Do you know if there were guests 7183

allowed on the property without Mr. Jackson's approval?
MR. SANGER: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: Are you aware of any instances, personally aware of any instances, where an individual was allowed on that property, Neverland Ranch, if Mr. Jackson -- and Mr. Jackson did not want them there?
A. At the time of them coming on?
MR. SANGER: Objection. Foundation and vague.
Q. BY MR. AUCHINCLOSS: Yes.
THE COURT: Overruled.
You may answer.
THE WITNESS: No, generally Mr. Jackson would be the one who allowed people to come on the property. There was sometimes when somebody would show up and we would call whomever was in charge, like Jesus Salas or Joe Marcus, and he would make a decision whether or not they could come on. But for the most part, from what all I remember, those are people who have been allowed on the property prior to that occasion.
Q. BY MR. AUCHINCLOSS: Was Frank Tyson one of these people?
A. Yes.
Q. So during your evening rounds as a security 7184

officer, would you ever have occasion to see Mr. Jackson during the late and early morning hours?
A. Yes.
Q. Would you ever have occasion to see him with his guests during the late and early morning hours?
A. Yes.
Q. Were his guests during these periods ever children?
A. Yes.
Q. How often?
A. Often.
Q. Okay.
A. Often. I don't know how to say how often, but often.
Q. And the assignments and guest logs. There are certain rooms that are assigned to certain guests. Does that mean that that individual who was assigned to that unit necessarily slept in that unit on that given night?
A. No.
Q. Why do you say that?
A. Because -- well, one of the biggest reasons is we would receive the phone calls in the evening hours for guests at the front gate. And nine times out of ten, we had to try several extensions to find that person. The first one you would try would always be where on the log it said they would be, if it were a guest unit or in the theater or wherever 7185

it said they may be. We went through several different places. So you would try that first. But it was -- often we had to go through more than one extension to find someone.
Q. Were there any instances where you'd see children sleeping in areas of the ranch where they were not assigned?
A. Yes.
Q. How common was that?
A. Um, it happened. It wasn't uncommon. It wasn't something that happened every time, but it definitely happened.
Q. Okay. Who is Dr. Farshshian? Do you know that name?
A. I know he's a doctor. I don't know what he's a doctor of. And I know he came to the ranch often.
Q. Do you know if Dr. Farshshian would ever come to the ranch without Mr. Jackson?
A. I don't know if he did or didn't.
Q. As far as the -- as far as the individual you've named as Chris Carter --
A. Yes.
Q. -- you previously identified him as what?
A. Chris Carter?
Q. Yes, and his relationship to Mr. Jackson.
A. As a security guard, I believe personal security guard. 7186

Q. And how often would you see Mr. Carter with Mr. Jackson?
A. Together?
Q. Yes.
MR. SANGER: I'm going to object. Vague as to time.
MR. AUCHINCLOSS: That's fine. I'll refine that question.
Q. When did you first see Chris Carter start to visit Neverland?
A. Oh. Probably in either late 2001 or early 2002.
Q. And was he employed as a security guard for Mr. Jackson at that time?
A. Yes.
Q. Now, you've mentioned that there are security guards that are personal guards and security guards that are guards on the ranch.
A. Yes.
Q. The difference is what?
A. Guards on the ranch generally don't travel with Mr. Jackson.
Q. So Chris Carter would be someone who traveled with Mr. Jackson?
A. Yes.
Q. When Mr. Jackson -- well, let me strike that. When Mr. Carter was on the ranch, would he ever spend any time just as a guest of the ranch, 7187

generally speaking?
A. No.
Q. So if Mr. Carter visited -- was on the ranch, would it be fair to say that Mr. Jackson would generally be with him?
MR. SANGER: Objection; leading.
MR. AUCHINCLOSS: I can rephrase it.
THE COURT: Sustained.
Q. BY MR. AUCHINCLOSS: When Mr. Carter was on the ranch, generally where was Mr. Jackson?
A. On the ranch.
Q. Okay. Now, you've mentioned during direct examination that there was this grease board with a message from somebody that says Gavin is not to leave the property.
A. Yes.
Q. And Mr. Sanger has shown you one of the exhibits that says Gavin and Star are not to leave the property.
A. Yes.
Q. Is there a relationship between the logs that you looked at and the information that you would normally find on that grease board?
A. Yes, at times there --
Q. Would one normally track the other?
A. Yes.
Q. And why is that?
A. So that -- because we don't all -- let's say 7188

there's three of us on duty at the ranch as security guards. Because we're not all at the front gate at the same time -- for instance, if we all worked 6 p.m. to 6 a.m., we're not all going to work the gate at 6 p.m. to 6 a.m. So there would be one at the gate, or two or three, however many more, at the house, so that both areas of the security, both offices of the security had the same information.
Q. Okay. So all the security guards would be on the same page working to fulfill those directives?
A. Correct.
Q. Now, I believe the directive that appears in the log, if I remember correctly -- let me just find it here.
If I could have the Elmo, Your Honor.
The date on this particular exhibit is 2-19-03. And this is the one that has, "The kids are not to leave per Joe." Let's get the entire statement in there, and I believe that's at 5:52.
Now --
MR. SANGER: Your Honor, I'm sorry, just for the record, could we have the page number?
MR. AUCHINCLOSS: Oh, yes. Certainly.
MR. SANGER: And the exhibit number.
MR. AUCHINCLOSS: That's a good point. This is Exhibit No. 334 and it's page number 154.
Q. Have you ever seen a directive like this on 7189

1 one of the logs before that told the security guards
2 not to let a child off the property?
3 A. No.
4 Q. Have you ever seen a directive before like
5 the one you saw on the grease board that said, ?Do
6 not let Gavin off the property??
7 A. No.
8 Q. During your five years, did you ever see
9 anything of that nature during your employment?
10 A. No.
11 MR. SANGER: Objection; asked and answered.
12 MR. AUCHINCLOSS: I said ?before,? and this
13 contemplates the entire period.
14 THE COURT: All right. The objection is
15 overruled. It's answered.
16 Q. BY MR. AUCHINCLOSS: As far as this date
17 goes, February 19th, are you aware whether or not
18 Janet Arvizo was scheduled to return to Neverland on
19 that particular day?
20 A. I'm not aware if she was.
21 Q. All right. I have a few questions about the
22 logs and I'll be done.
23 Beginning with the log for 334, Exhibit 120,
24 we've had considerable testimony about this
25 particular page.
26 Now, first of all, let me ask you, based
27 upon your review of the logs and your experience in
28 working with these logs, how would you characterize 7190

the degree of accuracy that is recorded?
MR. SANGER: I'm going to object. Are we talking about this particular page or are we talking about --
MR. AUCHINCLOSS: In general.
THE WITNESS: In general, they were -- can I answer?
THE COURT: Sure.
THE WITNESS: Sorry.
In general they were accurate. Obviously we make mistakes spelling names. There was that issue. But they were accurate.
Q. BY MR. AUCHINCLOSS: And as far as this particular page goes, which is at the bottom, 2-7-03, this shows that the Arvizos are a carry-over from the previous day?
A. Yes.
Q. And if we go back to the preceding day, we have -- I'm now showing you 2-6-03. We have this guest information --
MR. SANGER: Your Honor, excuse me. Could we have a page number?
MR. AUCHINCLOSS: Yes, thank you. That same exhibit, 00116.
Q. Now, if Gavin, Star, and Davellin were on the property, if the Arvizos were on the property on 2-7-03 as a carry-over, shouldn't they be reflected in this document on February 6 somewhere in Guest 7191

1 Information?
2 A. Yes.
3 Q. So how do you explain that?
4 MR. SANGER: Calls for speculation, Your
5 Honor.
6 MR. AUCHINCLOSS: Not necessarily.
7 MR. SANGER: And lack of foundation.
8 THE COURT: Overruled.
9 You may answer.
10 THE WITNESS: Either it was completely
11 overlooked or they weren't there.
12 Q. BY MR. AUCHINCLOSS: Would you agree there
13 clearly is an error in the logs somewhere on those
14 two pages?
15 A. Yes.
16 Q. Now, as far as the "Owner and guest"
17 notation there that you see, I believe you were
18 shown that by Mr. Sanger, and you responded that
19 there was something odd about that?
20 A. Yes.
21 Q. What is it that you find curious about that
22 entry?
23 A. What strikes me is that we would never -- I
24 would never, and I don't believe anyone else would
25 ever write "Owner" down, "Owner and guest," on one
26 of these logs. Again, for his privacy. We never
27 logged him in or out.
28 Q. Okay. Would you sometimes make a notation 7192

1 if he was to be expected on the property?
2 A. On one of these sheets?
3 Q. On a sheet somewhere; just that, Mr.
4 Jackson is expected to come today, or something of
5 that nature.
6 A. No, that was generally verbal.
7 Q. Okay. But as far as an entry on -- in this
8 particular fashion, you've never seen this before?
9 A. No.
10 Q. Never seen it during your five years there?
11 A. No.
12 Q. Do you recognize that handwriting at all?
13 A. No. I can barely read it. But, no, I don't
14 recognize it.
15 MR. AUCHINCLOSS: All right. If I could
16 just have a moment, Your Honor.
17 THE COURT: Yes.
18 Q. BY MR. AUCHINCLOSS: Do you know an
19 individual by the name of Klein?
20 A. Is there a first name?
21 Q. Doctor?
22 A. Dr. Klein. I remember the name of Dr.
23 Klein.
24 Q. Okay. And did that have any relationship to
25 your employment at Neverland?
26 A. Yes.
27 MR. SANGER: I'm going to object. It's
28 beyond the scope of cross. 7193

MR. AUCHINCLOSS: I believe counsel showed him a document that had Dr. Klein's name on it.
THE COURT: All right. Overruled.
Q. BY MR. AUCHINCLOSS: And how do you know Dr. Klein?
A. Just that he came to the property.
Q. Do you know what his relationship was to Mr. Jackson?
A. No.
Q. Do you know if he would be a guest of Mr. Jackson's when Mr. Jackson was not present?
MR. SANGER: Objection. Lack of foundation, Your Honor, and relevance.
THE COURT: Overruled.
You may answer.
THE WITNESS: I don't recall if he was ever there without Mr. Jackson being there.
Q. BY MR. AUCHINCLOSS: Okay. When one of the Rolls or the Bentleys would leave the property, can you tell me whether or not Mr. Jackson would generally be associated with the use of that vehicle, such a vehicle?
MR. SANGER: Objection. Vague and lack of foundation.
THE COURT: Sustained on vague.
Q. BY MR. AUCHINCLOSS: When you were conducting your daily duties at the security guard booth -- 7194

A. Yes.
Q. -- would you see Mr. Jackson coming and going onto the property?
A. Yes.
Q. Would he typically be in a vehicle?
A. Yes.
Q. Would you see an occasion where the Bentley or the Rolls was used?
A. Yes.
Q. Would you be able to see if Mr. Jackson was in that vehicle?
A. In the Rolls, the older Rolls Royces, yes, because there wasn't as dark a tint as on the Bentley. The Bentley was very dark tinted.
Q. Can you tell me, were those cars generally used when Mr. Jackson was being transported somewhere?
A. The Bentley in particular, yes.
Q. And I'm going to direct you to Exhibit No. 191, and/or I should say Exhibit 335, page number 191, if I can find it. It's not in order. Here we go. That's the wrong exhibit. I'm sorry, Your Honor.
That actually completes my redirect. Thank you.
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// 7195

RECROSS-EXAMINATION
BY MR. SANGER:
Q. I know you want to go home.
A. Yes, sir.
Q. I'll try to get you out of here.
First of all, you had occasion to meet
Michael Jackson from time to time, correct?
A. Yes.
Q. Had a chance to talk with him from time to
time, correct?
A. Yes.
Q. And you felt it was appropriate to respect
his privacy at his home, correct?
A. Correct.
Q. There was nothing weird about allowing a
celebrity to have private time at his home, was
there?
A. No.
Q. And in fact, how many employees were there
at the ranch, roughly, during the time you worked
there?
A. Probably around 80. Between 80 and maybe
100.
Q. So if 80 or 100 people came up and spent a
minute with Mr. Jackson every time, every day, he
would have no privacy, correct?
MR. AUCHINCLOSS: Objection; argumentative.
THE COURT: Sustained. 7196

Q. BY MR. SANGER: Okay. In other words, with that many people or even with a few people, it would be important to allow a person whose home it was to spend time at their home and not be bothered by people who are employed there to work for him, correct?
MR. AUCHINCLOSS: Same objection.
THE COURT: Overruled.
You may answer.
THE WITNESS: Yes.
Q. BY MR. SANGER: Okay. Now, in the course of knowing Mr. Jackson in the context that you just described, Mr. Jackson is sensitive to the sun; is that correct?
MR. AUCHINCLOSS: Objection; foundation.
THE COURT: Sustained.
Q. BY MR. SANGER: Were you aware that he took measures to try to avoid direct sunlight?
MR. AUCHINCLOSS: Objection; exceeds the scope.
MR. SANGER: Not at all. Dr. Klein.
THE COURT: Overruled.
(Laughter.)
THE WITNESS: Was I aware --
Q. BY MR. SANGER: That he took measures to avoid direct sunlight.
A. Yes.
MR. AUCHINCLOSS: Object as to foundation. 7197

THE COURT: Overruled.
MR. SANGER: And the answer's in, Your Honor?
THE COURT: Yes.
MR. SANGER: Thank you.
Q. Were you aware that Dr. Klein was the dermatologist treating Mr. Jackson's vitiligo?
A. No.
Q. Were you aware that he was a dermatologist?
A. I was aware that he was a doctor.
Q. And you believe he was Mr. Jackson's doctor for one problem or another; is that correct?
A. Yes.
Q. All right. Now, there was testimony on direct and then redirect again about this notation on the grease board and the notation in the logs on page -- it was 154 of Exhibit 334 about -- the notation on the grease board you recall was specific to Gavin. Gavin should not leave the property; is that right?
A. Gavin is not allowed off property.
Q. That's your recollection of what was on the grease board, correct?
A. Yes.
Q. And your recollection of what was in the log is what, in fact, was shown to you in Exhibit 334, page 154.
May I, your Honor? 7198

1 THE COURT: Yes.
2 Q. BY MR. SANGER: Page 00154, and again, it
3 says -- the whole quote is, "The kids are not to
4 leave per Joe." "Kids" meaning like Gavin, Star, et
5 cetera, right?
6 A. Right.
7 Q. And this was on the log of - you can see it
8 there - 2-19-03, correct?
9 A. February 19th.
10 Q. February 19th, 2003, correct?
11 A. Yes.
12 Q. And that was that time period where you had
13 so many people on the ranch that you had this master
14 list on 2-17, and then the regular posting of guests
15 didn't resume again until after 2-20. You resumed
16 again on 2-21-03, correct?
17 A. Yes.
18 Q. All right. So it was not possible to track
19 everybody's movements on and off the ranch during
20 that period of time; is that correct? They weren't
21 all logged in and out as they should have been?
22 A. Not possible to --
23 Q. Track whether or not people left and came
24 back on the ranch between that 2-17 and 2-20 when
25 they were all kind of lumped together?
26 A. I believe there's even a note on the bottom
27 of that page that that's going to be carried over
28 through those periods. I believe it would be easy 7199

to keep track of who comes and goes on the property.
In answer to your question, no, I believe
that it could be tracked --
Q. Okay.
A. -- who was coming and going.
Q. All right. And I'm going to --
A. Maybe not by paperwork, but it could have
been done.
Q. Okay. It could have been done, but the
paperwork here is somewhat deficient in that regard,
isn't it?
Let me put up 149, which is the page that
said 2-17 through 2-20. And that's where we had
everybody there on that big list, correct?
A. Correct.
Q. And, for instance, it shows for the Arvizo
family, the kids, it shows carried over from the day
before, and it shows 1951 hours out, and it doesn't
show back in.
A. Well, if you lift -- scoot the page back so
we can see the bottom.
Q. Certainly.
A. If I were working the gate at this time
period and I saw that note on the bottom, "List
until guest departs, C-1," which is for Charles 1,
which was Curtis Gordon, who was a supervisor, I
would take that to mean that they came in on -- or
the carry-over happened on the 17th, and their time 7200

1 out was on the 20th.
2 Q. Okay. I understand. So your interpretation
3 of this, if this were accurate, is that the Arvizos
4 did not leave until the evening of the 20th, 1951
5 for the children, and 2145 for Janet, correct?
6 A. Correct.
7 Q. So again, everybody gets this, but 7:51 at
8 night and 9:40, whatever that says, at night for
9 Janet, correct?
10 A. Yes.
11 Q. Now, were you -- are you aware, as you sit
12 there right now, that the Arvizos were in Los
13 Angeles on the evening of the 19th?
14 A. No.
15 MR. AUCHINCLOSS: I'm going to object as to
16 the form of the question being -- assuming facts.
17 THE COURT: The answer is, "No." Next
18 question.
19 Q. BY MR. SANGER: And if they were in Los
20 Angeles on the evening of the 19th, there is no
21 indication in these logs that they left the ranch
22 for that purpose; is that correct?
23 A. That's correct.
24 Q. All right. And, now, turning to 154 again,
25 which we've all seen, 2-19, it says 1752, so that's
26 5:52, just before six o'clock in the evening on the
27 19th.
28 If the Arvizos were supposed to be available 7201

for the purpose of going to Los Angeles for a videotaping, would it be reasonable for the gate to be advised that the kids should not leave the ranch?
MR. AUCHINCLOSS: I'm going to object as argumentative and assuming facts not in evidence.
THE COURT: Sustained as argumentative.
MR. SANGER: All right.
Q. Let's put it this way: In other words, as part of the duties of somebody at the gate, would you feel it was an appropriate instruction that somebody not -- whether it's an adult or a child, that somebody not leave the ranch if they're expected to be available to get into a car to go somewhere?
MR. AUCHINCLOSS: Objection. Argumentative; calls for a conclusion.
THE COURT: Sustained.
MR. SANGER: All right.
Q. Now, whatever that notation is for, was that notation placed there in a place on these gate activity logs where any and all of the security staff would be able to read it?
A. Any and all that were working that day, yes.
Q. Okay. And was it -- are these records kept as permanent records?
A. I believe so.
Q. All right. So presumably months later, years later, somebody could go back and find that 7202

notation, right?
A. Yes.
Q. This is not a secret communication that was designed to be destroyed after people received the information, correct?
A. Correct.
Q. Okay. It was left as a permanent memorial to something that was instructed or something that was communicated to the security staff; is that right?
A. Yes.
Q. And when you talk about this grease board, any message that was on the grease board was put there so that anybody on the security staff could see it; is that correct?
A. Correct.
Q. And anybody else that consulted the records could also see it, obviously; is that right?
A. These records.
Q. I'm sorry, you're right. You're up all night and I'm getting confused, so let me clarify it.
First of all, the grease board. Anybody that came into the security office could see that grease board and would be able see what was up there, right?
A. Yes.
Q. And that was right in the front room, 7203

1 correct?
2 A. Correct.
3 Q. The doors are often open?
4 A. When someone comes in and out.
5 Q. There's windows there?
6 A. Yes.
7 Q. Administration people can come down and do
8 often come down into the security office, correct?
9 A. Correct.
10 Q. So there's people that would work up in the
11 administration building, the ranch manager, the
12 administrative assistants and so on, correct?
13 A. Yes.
14 Q. Firemen could go in there and see that,
15 correct?
16 A. Yes.
17 Q. You of course could see it, and you were a
18 sworn peace officer, right?
19 A. Correct.
20 Q. All right. And then similarly, with regard
21 to those records, the gate log records, those were
22 maintained so that people from the administration
23 could review them, correct?
24 A. Correct.
25 Q. And again, firemen and other security
26 officers could review them?
27 A. Yes.
28 Q. So this was not a secret? 7204

A. No.
Q. Thank you.
Now, you indicated that sometimes
assignments got -- let me withdraw that.
The question was about room assignments.
Was there really a room assignment system?
A. Yes, at times there were.
Q. Okay.
A. Especially with the guest units.
Q. Who assigned people guest units?
A. Generally it would be the -- whomever was in
charge of the house, or at times who was in charge
of the housekeeping, or the ranch manager.
Q. Okay. So was it your understanding that
those -- that somebody like that would actually tell
the guest, "You are assigned to this unit"?
A. Yes.
Q. Okay. And if guests wanted to stay
someplace else, for instance, somebody said, "Boy,
I'd really like to have Unit No. 4," would an effort
be made on the part of the staff to allow that
person to have that unit?
A. I never was involved in that.
Q. Fair enough. If somebody wanted to stay,
for instance, out at the theater rather than a guest
unit, would they be accommodated, for the most part?
A. For the most part, yes.
Q. All right. Now, sometimes somebody might be 7205

assigned, say, to a guest unit and they would decide, "Well, I'd really rather stay out at the theater." That could happen, right?
A. Sure, it could happen.
Q. They might ask permission of somebody, whatever happens; they end up staying out at the theater on Night No. 1?
A. Okay. Yes.
Q. And it's -- it's generally -- it generally becomes known where the guests are staying; is that correct?
A. Eventually, hopefully.
Q. Okay.
A. Yes.
Q. But guests may make requests for food or other services on a -- well, let me ask that. They may do that from time to time?
A. Yes.
Q. In fact, it's very common for people to call for food or drink or something and have it delivered to where they are?
A. Yes.
Q. And security eventually becomes aware of where people are, either through them requesting services, or phone calls coming in for them, or something else, right?
A. Yes.
Q. And so if somebody is logged in repeatedly 7206

in the same unit in the security logs, that would
tend to indicate that security is now pretty much
aware that that's where the person is staying; is
that right?
A. Yes.
Q. All right. Now, you remember Davellin, do
you not?
A. Vaguely.
Q. Vaguely. Do you remember -- and you
remember Marie Nicole?
A. Yes.
Q. During this time period, do you remember
Davellin and Marie Nicole hanging out together?
A. Yes, I believe I do.
Q. And they seemed to be good friends; is that
correct?
A. Yes.
Q. And did they seem to be having fun?
A. Yes.
Q. All right. And they'd walk around the
property and have a good time?
A. Sure.
Q. All right. And do you recall Davellin and
Marie Nicole staying out at the theater during this
period of time?
A. Yes, I do.
Q. So in addition to the log entries, you
personally recall them being out -- staying out in 7207

that area; is that correct?
A. Yes.
Q. Okay. And I believe one last area I want to ask you about here that was brought up by Mr. Auchincloss.
You have experience as a police officer, and also experience being a security guard for Mr. Jackson, a major celebrity, and I'm going to ask you, drawing on all of that, do you assume that intruders are not going to be a danger to anybody?
A. No.
Q. In fact, you assume they're going to be a danger?
A. Yes.
Q. You have to do that. And you're aware of celebrity stalkers, are you not?
A. Yes.
Q. And you're aware of instances where celebrity stalkers, even though they were fans, did harm to celebrities, correct?
A. Yes.
Q. And did harm to people around celebrities, correct?
A. Yes.
Q. Were you aware that one of the intruders actually got into the train room upstairs in Mr. Jackson's house?
MR. AUCHINCLOSS: I'll object. Assumes 7208

1 facts.
2 THE COURT: Overruled.
3 You may answer.
4 THE WITNESS: The third floor of the house?
5 Q. BY MR. SANGER: Yes.
6 A. Yes.
7 Q. And you would consider that to be a serious
8 intrusion into Mr. Jackson's security, would you
9 not?
10 A. Yes.
11 Q. Were you aware that one of the intruders was
12 possessing a handgun?
13 A. No.
14 Q. A number of these intruders were actually
15 arrested, the sheriff was brought on, and they were
16 arrested and taken away; is that correct?
17 A. Correct.
18 Q. And some of the repeat intruders were
19 actually prosecuted by the District Attorney's
20 Office; is that right?
21 A. Yes.
22 MR. SANGER: Okay. Thank you. No further
23 questions.
24
25 FURTHER REDIRECT EXAMINATION
26 BY MR. AUCHINCLOSS:
27 Q. Generally speaking, based on your experience
28 and not on what you anticipated, what did these 7209

1 intruders want?
2 MR. SANGER: I'm going to object. That's --
3 that's vague.
4 THE COURT: Overruled.
5 You may answer.
6 THE WITNESS: What did they want?
7 Q. BY MR. AUCHINCLOSS: Yeah. Why did they
8 want to come on Neverland?
9 A. They wanted to see Mr. Jackson.
10 Q. Just see him?
11 A. See him.
12 Q. Maybe meet him?
13 A. Yes.
14 Q. That's all?
15 MR. SANGER: Objection. Calls for
16 speculation, Your Honor.
17 THE COURT: Argumentative; sustained.
18 Q. BY MR. AUCHINCLOSS: As far as the grease
19 board goes, you previously testified that that
20 instruction was on the board for approximately a
21 week?
22 A. That's about the length that I remember it
23 being there.
24 Q. Did you take that instruction seriously for
25 the entire week?
26 A. Yes.
27 Q. Did you consider that to be an order to not
28 let Gavin off the property for that entire period of 7210

1 time?
2 A. Yes.
3 Q. And can you tell me, based on your
4 experience and training at Neverland, who would have
5 authority to make such an order on the grease board
6 and in the logs?
7 A. Well, ultimately Mr. Jackson.
8 Q. Okay. And who would do -- who would
9 ultimately? How would the chain go? Who put stuff
10 up on the board?
11 A. Generally one of my supervisors.
12 Q. And who was your supervisor?
13 A. Either Curtis Gordon, Julio Magana or Violet
14 Silva.
15 Q. And who do they report to?
16 A. Joe Marcus.
17 Q. And who does he report to?
18 A. Mr. Jackson.
19 MR. AUCHINCLOSS: Thank you. No further
20 questions.
21
22 FURTHER RECROSS-EXAMINATION
23 BY MR. SANGER:
24 Q. Now, when you say □report to,□ you have
25 absolutely no evidence whatsoever that Mr. Jackson
26 himself gave an instruction that Gavin was not to go
27 off the ranch; is that true?
28 MR. AUCHINCLOSS: Objection; argumentative. 7211

THE COURT: Overruled.
You may answer.
THE WITNESS: I have no knowledge of him giving that.
Q. BY MR. SANGER: All right. And the fact that people report -- Mr. Jackson owns the property, to your knowledge, correct?
A. To my knowledge, yes.
Q. Okay. And the fact that people ultimately report to the owner of the property does not mean that they get every instruction that they communicate down the line from the owner of the property, correct?
A. Correct.
Q. So it's entirely possible, based on your understanding of this chain of command, that somebody somewhere in the middle, up or down, in this chain of command decided to put this on the grease board, correct?
A. It could have happened, yes.
Q. And you certainly never saw Mr. Jackson come in and write anything on the security grease board himself, correct, sir?
A. That's correct.
Q. And you never saw Mr. Jackson write anything himself into the gate logs; is that correct, sir?
A. Correct.
MR. SANGER: Okay. Thank you. 7212

MR. AUCHINCLOSS: One last question.

FURTHER REDIRECT EXAMINATION

BY MR. AUCHINCLOSS:

Q. Are you aware, during the course of your employment at Neverland, of any motive, reason, why Joe Marcus, Violet Silva, Curtis Gordon, Julio Magana, any of these individuals, any -- are you aware of any reason why they would want to have Gavin Arvizo kept on the Neverland property?

A. No.

MR. SANGER: Calls for speculation, Your Honor.

THE COURT: Sustained.

MR. AUCHINCLOSS: Thank you. No further questions.

MR. SANGER: And move to strike the answer. I think it did come in or was said.

THE COURT: I'll strike the answer.

MR. SANGER: Thank you.

He had no questions. There were no questions, so I have no questions.

THE COURT: You're free to go.

THE WITNESS: Thank you, sir.

THE COURT: Come forward.

When you get to the witness stand, please remain standing, face the clerk and raise your right hand. 7213

STEPHEN CLEAVES
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record.
THE WITNESS: Stephen Cleaves.
S-t-e-p-h-e-n; C-l-e-a-v-e-s.
THE CLERK: Thank you.
MR. SANGER: Your Honor, could I have just one moment, please?
THE COURT: Yes.
MR. SANGER: Thank you.
MR. SNEDDON: Go ahead?
MR. SANGER: Yeah.

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. Good morning.
A. Good morning.
Q. You're a sergeant employed by the Santa Barbara County Sheriff's Department, correct?
A. That's correct.
Q. How long have you been with the department?
A. 25 years.
Q. And your current assignment?
A. I'm working special operations.
Q. And you live in Santa Ynez? 7214

A. That's correct.
Q. And on November the 18th of 2003, were you part of a group of people who executed a search warrant at Neverland Valley Ranch?
A. I was.
Q. And what was your particular responsibility on that day?
A. To supervise a group of investigators that went and searched the security offices for files.
Q. And when you say "security office," where was that located on the premises?
A. It was part of the main residence at the far west end, I believe that is.
Q. Was it directly connected to the residence or was there a breezeway between the two buildings?
A. I believe there's a breezeway.
Q. Now, when you got to the security office, you said that you were assigned a particular responsibility in that office.
A. That's correct.
Q. What was the responsibility?
A. To look for files or computers. Specifically, we had a list of names that we were looking for that -- of persons who came on or off the ranch.
Q. And did those names include the Arvizo family?
A. Yes, they did. 7215

Q. And other individuals?
A. They did.
Q. Now, did you actually participate in looking through the records yourself?
A. I did.
Q. And from where did you obtain the records?
A. There were several boxes of -- cardboard boxes that had files stored in them in that room, and we ultimately went through each one of those boxes and then pulled the files with the names that we were looking for.
Q. So with regard to the search that occurred, all of the boxes and all the files contained in that security office were viewed by you or other members -- or the people working with you in that task?
A. That's correct.
MR. SANGER: Objection. Calls for speculation; lack of foundation; and leading.
THE COURT: Overruled. Next question.
Q. BY MR. SNEDDON: Did you personally, as a result of your efforts in looking through these materials, take into your custody and control certain exhibits?
A. I did.
Q. And do you recall just approximately how many -- well, first of all, what were the nature of the items that you actually took into your custody 7216

and control?
A. Mine were files, and they were related to the gatehouse log entries and/or any medical injury incident reports. I believe all of mine were directly related to the entry logs, though, for the ranch.
Q. And when you went through the items and you saw items that you felt were items that you wanted to seize pursuant to the search warrant, what did you do with those items?
A. As we went through the box, we would collect the items that we wanted to seize and set them aside, completed the box, and then we took the items over to Deputy Moeller, who was our seizing officer, and turned them over to him. He assigned them an item number and packaged them for evidence.
Q. And that's what you did with regard to the items that you took?
A. That's correct.
Q. Now, do you recall whether or not any of the documents that you went through personally that day involved any records beyond December 31st of the year 2002? In other words, did you find any records for the year 2003?
A. I -- I don't believe so, no.
MR. SNEDDON: No further questions.
//
// 7217

CROSS-EXAMINATION
BY MR. SANGER:
Q. Sergeant Cleaves, in your 25 years with the Santa Barbara Sheriff's Department, what kinds of duties did you have?
A. Started off in patrol, working down in Goleta. Was transferred to Solvang, Santa Ynez. Worked there for a number of years. Went back down to special operations, where I worked vice, narcotics, gangs, and then was assigned to the helicopter crew. Was promoted to sergeant, transferred to Santa Maria.
From Santa Maria, back to Santa Ynez. From Santa Ynez, back to Santa Maria. And then back to Santa Ynez, and I'm currently working in special operations.
Q. Special operations is a -- is that a detective assignment?
A. It is.
Q. All right. And in this particular case, the extent of your assignment in this case was essentially to assist with this search and look for some records in the office?
A. That's correct.
Q. And did you search anyplace other than the security office?
A. Our search also --
Q. I'm sorry. I was vague. Let me clarify the 7218

question. Did you personally search anyplace other than the office?
A. I did.
Q. Where else did you search?
A. The garage immediately to the rear of the security office. And the video library that was upstairs above that office.
Q. You did not search the administration building; is that correct?
A. No.
Q. In fact, there was not a warrant to search the administration building, correct?
A. I don't know. I just searched the area that we were asked to search.
Q. So did you review the warrant?
A. I did.
Q. And you were given a briefing --
A. Yes.
Q. -- the morning of the search?
A. Yes.
Q. Is that correct, sir?
A. Yes, yes.
Q. And prior to your searching, you were given a copy of a protocol; is that right?
A. A protocol.
Q. It was a -- I forgot the name of -- a memorandum, in any event, that explained what the case was about and what you were looking for? 7219

A. We received the warrant, we read the warrant. And my assignment was to do the security wing, and that's what we did.
Q. Do you remember whether or not you got a little packet that included an outline of what the case was about and who the significant parties were and that sort of thing?
A. I don't recall that. I do recall getting a list of names that we were supposed to look for in the security office.
Q. And you got a copy of the affidavit for the search warrant?
A. Right.
Q. So you had a chance to familiarize yourself with that; is that correct?
A. Yes, sir.
Q. And the affidavit would have been something that explained to the judge issuing the warrant, would have explained what your department thought the case was about, and why you should be allowed to search, correct?
A. True.
Q. Correct?
A. Yes.
Q. And -- all right. Did you have a copy of the warrant itself, see a copy of the warrant?
A. We did get a copy of the warrant and we did read it, yes. 7220

Q. Was it your understanding, from all of that information, that the warrant was for the main residence, correct?
A. Yes.
Q. And it was for the security office, correct?
A. Yes.
Q. And it was for the separate building that was described as an arcade; is that correct?
A. I don't specifically recall that.
Q. All right. In any event, it was not for every building on that ranch, was it?
A. I don't have that specific knowledge.
Q. All right. In any event, to your knowledge -- well, let me withdraw that. Aside from where you said you looked, which would have been the security office, and then in that same building, which was part of the garage, correct?
A. Correct.
Q. You looked in the garage?
A. Correct.
Q. And then you went upstairs in that same building and you looked in the video library, correct?
A. Correct.
Q. All right. Other than that, you did not search any other part of that ranch, you personally, for records, correct? 7221

A. No, I did not.
Q. And are you familiar with Brian Barron?
A. I know the name. A security guard.
Q. Were you aware that he was a sworn peace officer?
A. At the time of the search I don't believe so.
Q. You're aware --
A. I hadn't paid attention.
Q. You are aware now; is that correct?
A. Yes.
Q. And if he has indicated that records are accurate, as presented to him in court by the prosecutor that pertain to these gate logs, would you have any reason to believe that he was incorrect?
MR. SNEDDON: Your Honor, I'm going to object. Calls for speculation; no foundation.
THE COURT: Sustained.
MR. SANGER: Okay. I have no further questions.
MR. SNEDDON: Nothing further.
THE COURT: Thank you. You may step down.
MR. SNEDDON: Thank you, Sergeant Cleaves. Whoever's out there.
MR. SANGER: There are probably a lot of people out there, but --
MR. SNEDDON: Only some of them are 7222

witnesses.
THE COURT: Raise your right hand, please, face the clerk.

TIMOTHY SUTCLIFFE
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record.
THE WITNESS: Timothy Sutcliffe, and that's spelled S-u-t-c-l-i-f-f-e.
THE CLERK: Thank you.

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. Actually, just to clarify things, you're the same Timothy Sutcliffe who testified previously in this case?
A. Yes, I am.
Q. That was a long time ago, but -- now, everybody probably recalls this, but just for the purposes of refreshing people's recollections, you're employed by the Santa Barbara County Sheriff's Department?
A. That is correct.
Q. And your current assignment is?
A. I work for the Criminal Investigations 7223

Division in the Forensics Unit.
Q. And was that your assignment back on
November 18th of 2003?
A. Yes, it was.
Q. Now, on that particular date, were you
assigned to assist Sergeant Cleaves in the review of
certain records and files in the security office of
Neverland Valley Ranch during the execution of a
search warrant?
A. Yes, I was.
Q. Now, tell me what you did on that particular
day with regard to the records in the security
office.
A. We were given a list of names of individuals
that -- to search for specific items. We were
checking through the security documents, which were
gate logs and guest lists, for those particular
names, and I did find some of those items.
Q. And with regard to the items that you found,
what did you do with them?
A. As I collected those items, I then gave
those to Detective Moeller, who listed them on the
SH-451 property form.
Q. Now, prior to testifying here today, I asked
you to review the logs that you personally took on
the occasion of the execution of that search warrant
on November 18th. Do you recall doing that?
A. That's correct. 7224

Q. And I specifically asked you to review those logs to see whether or not you found the name of Janet Arvizo on any of those documents that you took.
A. That's correct.
Q. And with regard to the documents you took, you found the name of the Arvizo children listed, did you not?
A. Yes, I did.
Q. And on the documents that you reviewed, did you find the name of Janet Arvizo listed as a guest at the ranch during any of those occasions?
A. No, I did not.
Q. Now, the records that you found, describe to the jury the process that you went through personally to take the records.
A. There were several boxes of records, and there was a filing cabinet, and I had selected a specific box to go through of records. And as I was pulling the records out, looking over each individual record searching for those individuals' names, then I would set those aside. And when I was done with a particular box or file, I'd hand those to Detective Moeller so he could enter those into the 451 form.
Q. All right. Now, lastly, with regard to the logs and the documents that you actually took on this particular occasion, did you find or take any 7225

1 logs that went beyond the date of December 31st of
2 2002?
3 A. Can I check my --
4 Q. Do you need to refresh your recollection on
5 that?
6 A. Yes, I do.
7 Q. What document are you doing that from?
8 A. The SH-451 form.
9 Q. All right. Please take a look at it and see
10 if it refreshes your recollection. That's just for
11 the documents you took, now.
12 A. Correct.
13 Yes, just the last entry is 12-2 of .02.
14 Q. Nothing with regard to the year 2003?
15 A. No.
16 MR. SNEDDON: Thank you. No further
17 questions.
18
19 CROSS-EXAMINATION
20 BY MR. SANGER:
21 Q. Detective Sutcliffe, how are you?
22 A. Good morning.
23 Q. The logs that you saw were located in the
24 security office; is that correct?
25 A. That's correct.
26 Q. All right. And that is, once again, the
27 office at the end of the building that has the
28 garage on the first floor and the video library on 7226

1 the second floor; is that correct?
2 A. That's correct.
3 Q. Did you search the administration building?
4 Do you know where the administration building is?
5 A. No. If you could tell me where it is.
6 Q. Up on the hill.
7 A. No, I did not search the administration
8 building.
9 Q. Okay. Did you -- did you -- and you were
10 briefed before you went out there to do the search;
11 is that correct?
12 A. That's correct.
13 Q. The search warrant did not include the
14 administration building, did it?
15 A. I don't recall on that.
16 Q. Okay. And you did not search the office at
17 the gate; is that correct?
18 A. No, I did not.
19 Q. You said the last record you have an entry
20 for in your sheriff's booking form is December 2,
21 2002; is that correct? Is that what you just said?
22 A. Can I check?
23 Q. Sure. Certainly. I thought I was wrong.
24 But you need to look. That's fine. Okay.
25 A. Yes, 12-2 of .02.
26 Q. Okay. That's the last record you seized; is
27 that correct?
28 A. That's the last -- the latest date. 7227

Q. That's the last date or the latest date that you seized, correct?
A. That is correct.
Q. That is not the latest date that you saw?
A. I don't recall any further than that.
Q. Do you recall seeing records there at that office that went through the end of 2002?
A. Yeah, I -- I recall. I think there was some 2003 records as well.
Q. Some 2003?
A. But I didn't seize those, no.
Q. In any event, you just seized the records up to the date -- let me withdraw that.
You just seized the records that had entries for the names that you were looking for, correct?
A. Correct.
Q. And you did not make any record of the last date of any records that were there; is that correct?
A. I don't understand the question, I'm sorry.
Q. That's fine. You did not make a note of the last -- the most recent record that was there present in the office; is that correct?
A. The only ones I'm real familiar with are the ones I collected. And the last date of the items I collected was -- the latest date was 12-2 of 2002.
Q. Okay. My question was, you did not make a note of the latest date that was present in the 7228

1 office, did you?
2 A. No, I did not.
3 Q. And your recollection was, however, that you
4 did not have the current logs for 2003, correct?
5 A. I recall that there was some 2003 logs. I
6 just remember dates for 2003, but I don't recall
7 what exactly they were.
8 Q. Okay. You didn't have logs -- this was
9 November 18th, 2003, that you're there, right?
10 A. Correct.
11 Q. You didn't have the logs for November 17th,
12 for instance, did you?
13 A. Not that I'm aware of.
14 Q. All right. And you did not locate the
15 current logs for the recent months of 2003 in your
16 searching, correct?
17 A. I personally did not, no.
18 MR. SANGER: All right. I have no further
19 questions. Thank you.
20
21 REDIRECT EXAMINATION
22 BY MR. SNEDDON:
23 Q. Well, let's just get this straight so
24 everybody understands it.
25 You were only authorized by the warrant to
26 seize documents through the time that the Arvizo
27 family was there, isn't that correct, through March
28 of 2003? 7229

A. That's correct.
Q. So there would be no reason to look for documents in April, May, June, July, November of 2003?
MR. SANGER: Objection. That's leading and it's also argumentative.
THE COURT: Sustained.
Q. BY MR. SNEDDON: In the execution of the search warrant, are you bound not to review the records that go beyond the period authorized by the judge in the warrant?
A. Yes.
Q. Now, with regard to whatever document you may have seen in 2003 that would have been within the time limit of the warrant itself, did you personally see anything within 2003?
A. No.
MR. SANGER: Excuse me, I'm going to object to that question. The way it's phrased is -- it's vague and it's also compound, if I understand it at all.
THE COURT: Sustained.
Q. BY MR. SNEDDON: Did you personally see any documents during your examination of the records covering the month of January 2003?
A. I don't recall the specific month. I just remember seeing 2003s. Seems to me that there was some, but I don't recall any specific information 7230

about 2003.
Q. In the execution of the warrant, if you'd seen something during the time period set forth in the warrant, in other words, January, February, March of 2003, and it contained the name of any of the parties that you were looking for, would you have taken it?
A. Yes, I would have.
MR. SNEDDON: Nothing further. No further questions.
THE COURT: Thank you.
MR. SNEDDON: Investigator Rooney.
THE COURT: We'll take our break.
MR. SNEDDON: Okay.
(Recess taken.)
THE COURT: Counsel?
MR. SNEDDON: Thank you, Your Honor. Tim Rooney.
THE COURT: Remain standing, please. Face the clerk and raise your right hand.

TIMOTHY ROONEY
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record.
THE WITNESS: Timothy Rooney, R-o-o-n-e-y. 7231

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SNEDDON:

Q. Mr. Rooney, you're employed by the Santa Barbara County District Attorney's Office, correct?

A. Yes, sir.

Q. How long have you been with the District Attorney's Office?

A. 16 years.

Q. And in what capacity are you employed by the District Attorney's Office?

A. Senior criminal investigator.

Q. Before that, did you have law enforcement experience?

A. 11 years with Santa Barbara Police Department.

Q. Okay. Now, on November the 11th of -- November the 18th, I'm sorry, November 18th, 2003, were you assigned to participate in the execution of a search warrant on Neverland Valley Ranch?

A. Yes.

Q. And what were your -- was part of the assignment that you were given that day to participate in the review of some documents and logs in the security office?

A. Yes.

Q. And were you working in conjunction with 7232

other people in doing that?
A. Yes, sir.
Q. I'm not sure that mike's working. You might want to try that one there.
A. Okay.
Q. And who was it that you were working with in processing these documents?
A. Sergeant Steve Cleaves from the sheriff's office, Deputy Moeller from the sheriff's office, Tim Sutcliffe from the sheriff's office, Shelly Sweeton, a criminal investigator with the District Attorney's Office, and myself.
Q. And from where did you obtain the materials that you personally went through?
A. From the security area.
Q. And were they in some form of containers?
A. Yes.
Q. What kind?
A. Some were retrieved from files that were in file cabinets and boxes.
Q. Now, what is the process that you used in -- first of all, were you given a list of names of people to look for on these logs and records?
A. Yes.
Q. And what was the nature of the records that you were looking through?
A. Records consisted of logs of people going in and out of the ranch, employees, guests, business 7233

vendors.
Q. And you had a list of names to look for; is that correct?
A. Yes, sir.
Q. And during the course of your examination of the documents that you personally examined, did you have occasion to remove some of those documents?
A. Yes, I did.
Q. And after you removed them, what did you do with them?
A. I notified Deputy Moeller and he scribed them, took them from my possession and documented them.
Q. So he took them from you, you gave them to him and he documented them --
A. Yes.
Q. -- is that correct?
A. Yes, sir.
Q. Now, have you had a chance to review the documents that you took on that particular day --
A. Yes.
Q. -- generally speaking?
A. Yes, I have.
Q. Do any of those documents include documents after the date of December 31st of 2002?
A. I don't believe so.
MR. SNEDDON: No further questions.
// 7234

CROSS-EXAMINATION
BY MR. SANGER:
Q. Good morning.
A. Good morning.
Q. It's still morning. We always have to check here. We get kind of out of sequence.
Did you write a report in this case?
A. No, sir.
Q. Your assignment, among other things, was to look through those documents; is that correct?
A. Yes.
Q. Were you assigned to do anything else in this case?
A. I helped search the video movie room that he had.
Q. The video library?
A. Yes, the library.
Q. I'm sorry.
A. The video library at the ranch.
Q. I didn't mean to talk over you.
Okay. The video library was upstairs in the same building as the security office?
A. Yes.
Q. And you also were assigned to stand watch over the guest units until somebody came to search them?
A. Yes.
Q. Okay. Other than that, did you do anything 7235

1 else in this case?
2 A. I went to the back employee area and stood
3 by till somebody came -- from the sheriff's office
4 came and contacted the employees.
5 Q. Okay. Did you search the administration
6 building? Let me ask the foundational question. Do
7 you know where the administration building was on
8 the ranch?
9 A. No, sir.
10 Q. Okay. You were down at the main residence
11 on the adjoining building with the video library and
12 the security office, correct?
13 A. Yes, sir.
14 Q. You did not go up on the hill to an
15 administration building to search there, did you?
16 A. Yes, that's the building I was referring to
17 in the back. I didn't search there, but I stood by
18 with the employees until somebody from the sheriff's
19 office relieved me. I did not search that area.
20 Q. You're saying □the back.□ Do you mean right
21 behind the house?
22 A. Up high where you're talking about.
23 Q. What does that building look like?
24 A. I don't remember.
25 Q. Was it an industrial-looking building?
26 A. I believe so.
27 Q. Okay. So we're then talking about the -- is
28 that the building that has a fire truck up there? 7236

A. There were no fire trucks when I was up there, I don't believe, but other employees' vehicles.
Q. All right. Okay. In any event, you did not search inside of that administration building; is that correct?
A. That's correct.
Q. And you're aware at the front gate there is an office at the gatehouse; is that correct?
A. Yes, there is.
Q. Did you search the office at the gatehouse?
A. No, sir.
MR. SANGER: Okay. Thank you. No further questions.
MR. SNEDDON: Nothing further.
THE COURT: Thank you. You may step down.
MR. SNEDDON: Detective Moeller.
Is that one on?
BAILIFF CORTEZ: It's on.
THE COURT: Remain standing. Face the clerk. Raise your right hand.

STEVEN MOELLER
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please be seated. State and spell your name for the record. 7237

THE WITNESS: My name's Steven Moeller,
M-o-e-l-l-e-r.
THE CLERK: Thank you.

DIRECT EXAMINATION
BY MR. SNEDDON:
Q. All right. Mr. Moeller, you're going to have to scoot up to that microphone there.
A. Can you hear me?
Q. That's perfect. That's as good as it gets in here.
All right. You're a deputy employed by the Santa Barbara County Sheriff's Department?
A. I am.
Q. How long have you been with the department?
A. 30 years.
Q. And what are your current duty assignments?
A. Currently I'm attached to the Aviation Bureau of the sheriff's department.
Q. And on November the 18th of 2003, you are one of the people who participated in the execution of a search warrant at Neverland Valley Ranch; is that correct?
A. That's correct.
Q. And on that particular occasion, were you assigned some responsibilities in connection with the execution of that warrant at the security office? 7238

A. Yes, I was.
Q. And what were those responsibilities?
A. To go through various documentation looking for specific names on the list, and doing a basic search of that security office.
Q. All right. And were you assigned a particular responsibility with regard to any of the documents that were found during the course of that search?
A. Yes. I was a scribe.
Q. What's that mean?
A. That means that I -- for the search team, once they find something that they believe they want to hold as evidence, they turn it over to me, I assign it a number, and then I fill out the property sheet.
Q. And then after you assign it a number and you fill out the property sheet, what do you do with it? What did you do with it on this occasion?
A. The evidence?
Q. Yes.
A. Bagged it.
Q. Okay. And then after you bagged it?
A. I turned it over to the evidence officer.
Q. All right. Now, you were working with some other officers in the security office who you provided the scribe responsibilities for. Now, who were the other officers you were working with in 7239

there?
A. There was Sergeant Steve Cleaves, Detective Sutcliffe, Detective Rooney, and Detective Sweeney.
Q. And as they -- as they gave you the particular item and you assigned a number to it, did you make out what's called an SH-451 form?
A. I did.
Q. What is that, for the jury?
A. Basically that takes the evidence that's turned over, any description of that evidence, and we log who located that evidence and what location.
Q. All right. I want to show you a series of exhibits, with the Court's permission. I can approach the witness, if I might.
THE COURT: Yes.
MR. SNEDDON: And Counsel, this is 300 through --
MR. SANGER: 334.
MR. SNEDDON: 334. Excellent.
Q. I'm going to ask you to examine the items 300 through 334, which basically ends where that yellow tag is.
MR. SANGER: Your Honor, I'm going to object to this procedure as cumulative, in that there's already a foundation and these documents were admitted.
MR. SNEDDON: I have other questions about the documents that I'm going to ask. 7240

THE COURT: I'm not going to rule on your objection, because I don't know -- he's just asked him to look at the records. So I don't know if it's cumulative or not.
Q. BY MR. SNEDDON: Okay. Have you looked at all those documents?
A. I have.
Q. Now, with regard to the very last one, this is People's 333, it's in evidence, it's the one -- yeah, flip that over, because I'm going to ask you a question about -- no. Flip it this way.
A. Okay.
Q. With regard to that particular document, in the upper left-hand corner is a number written in ink; is that correct?
A. That's correct.
Q. And do you recognize that number?
A. Yes.
Q. Okay. Did you put that number on there?
A. I did.
Q. Okay. Now, go back one more document, if you would. That document -- excuse me. With regard to the exhibit we were just talking about is in small numbers, black ink, correct?
A. That is correct.
Q. Now, go back one more.
MR. SANGER: May I approach, Your Honor?
I'm not sure I'm following this. 7241

THE COURT: Yes.
MR. SNEDDON: It's the same as in yours.
MR. SANGER: It's a different colored ink on that one. This is not colored.
MR. SNEDDON: It's black.
MR. SANGER: I see, okay. That was the first number? Can I just ask where the second number was?
THE WITNESS: 602?
MR. SNEDDON: That's on 601.
THE WITNESS: 601.
MR. SNEDDON: In the upper left-hand corner of the document.
MR. SANGER: All right. Thank you.
Q. BY MR. SNEDDON: Moving back, the next document has, in the upper left-hand corner, what number in black?
A. 6-3-5.
Q. Is that your handwriting?
A. Yes.
Q. Now, the handwriting with regard to 635 compared to 601 is significantly larger, is it not?
A. It is.
Q. Okay. And with regard to the review of the documents that I asked you to do in front of the jury here, those all have large print on them like the 6 -- like the one that's marked as People's 332, correct? 7242

A. Correct.
Q. So even though they're smaller in size in one case and bigger in others, it's the same handwriting, your scribe?
A. It is.
Q. Do you have your SH-451 form --
A. I do.
Q. -- with you?
Don't look at it yet. I'm going to ask you a question.
A. Okay.
Q. And if you have to look at it, I'll let you do that.
A. Oh. Okay.
Q. With regard to the items that were given you from No. 300 through 332 - okay? --
A. Okay.
Q. -- were any of those documents beyond the date of January 1st, 2003?
A. I don't believe so.
Q. Did you -- would your SH-451 help you refresh your recollection to that effect?
A. It might.
Q. Make sure you're certain of that.
Let me just ask you a question. Your report, your SH-451, is listed by item number, correct?
A. Correct. 7243

Q. So it doesn't necessarily correspond,
without individually looking at every page, as to
which is which?
A. Correct.
Q. So why don't we just turn all the way back,
just momentarily to get the place on this, to Item
No. 300 -- or Item 301. How's that? Just turn the
book to 301.
A. 301.
Q. Okay. And that corresponds to your Item No.
614, correct?
A. Correct.
Q. Just run consecutively to 614 down to the
end of your documents.
MR. SANGER: I'm going to object, Your
Honor.
MR. SNEDDON: Let me do it another way.
MR. SANGER: Sorry. Go ahead.
Q. BY MR. SNEDDON: Just please review your
form for right now.
A. Okay.
Q. And, now, does that refresh your
recollection as to whether or not items -- the
evidentiary items 301 through 332 were all items
from the year of 2002?
A. With the exception of one.
MR. SANGER: I'm going to object, Your
Honor. The exhibits speak for themselves. We're 7244

getting a report about the exhibits.
THE COURT: He just asked him to refresh his recollection. If I understand your objection correctly, I'll overrule it.
MR. SANGER: Well, the objection was -- the question was, what is the dates on the exhibits, not in his report.
THE COURT: He asked him to review the item and see if it refreshed his recollection.
Q. BY MR. SNEDDON: This would be only through Items -- your Item 635?
A. Correct. 2002.
THE COURT: I think what's happened is the question is in two stages. So I'll ask you to break the question down to two separate questions.
MR. SNEDDON: Yes, Your Honor. I will do that.
Q. Does reviewing your SH-451 form refresh your recollection as to whether or not the Exhibits 301 through 332 are all from the same year?
A. Correct.
Q. And that year would be what?
A. 2002.
Q. And there was a single document which is Exhibit 333, correct?
A. Correct.
Q. One-page document. That was from the year 2003? 7245

A. Correct.
MR. SNEDDON: Nothing further.
MR. SANGER: The only problem is the book that was given to me has a two-page document. Maybe it's two sides of one page.
May I just inquire?

CROSS-EXAMINATION
BY MR. SANGER:
Q. 333, is that two pages, or is it one page with two sides, or what is it?
A. Two sides.
Q. Actually --
A. Well --
Q. -- one piece of paper?
A. No, two pieces of paper.
Q. So basically, then, the answer would be Exhibit 333 is two pages that pertain to 2003?
A. Correct.
Q. Without getting too complicated here, you have a number of records which include gate logs from 2002?
A. Correct.
Q. And then you have two pages, which is Exhibit 333, that are not gate logs; is that correct?
A. No, they're not.
Q. Okay. So you have -- those are a Neverland 7246

Valley Fire Department Emergency Medical Report from 2003, correct?
A. Correct.
Q. And then there's a Neverland Valley Medical Report Log from 2003?
A. That's also correct.
Q. So those medical reports are from 2003. The gate logs that you scribed in during the search were from 2002?
A. Correct.
Q. There you go.
Now, by the way, is your assignment with the Aviation Bureau, is that a -- does that mean you're up in the air full time in a helicopter or a plane?
A. Yes.
Q. That's where you are at all times?
A. As much as --
Q. As much as you can, probably?
A. As much as the county can afford.
Q. When did you first get that assignment?
A. Approximately six years ago.
Q. All right. So at the time you were -- you were assigned to do this, you were taken out of the air to come down to the ground and help out?
A. Actually, during that year that the search warrant occurred, I was temporarily with the narcotics unit for about eight months.
Q. So you were working as a detective? 7247

A. I was.
Q. And you have prior experience as a detective in the department?
A. No.
Q. That was your only time as a detective?
A. Yes.
Q. All right. Now, you were briefed on this search before you went out to the ranch, correct?
A. Correct.
Q. And you received a copy of the search warrant, correct?
A. Correct.
Q. And you were aware of the structures that were covered by the search warrant; is that correct?
A. Correct.
Q. And that would be the main house, correct?
A. Correct.
Q. The security office, correct?
A. Correct.
Q. And then the arcade building?
A. Yes.
Q. Did you search the administration building?
A. I did not.
Q. Do you know where that administration building was?
A. No.
Q. Were you aware there was an industrial-looking building up on the hill? 7248

A. If that's by the fire department --
Q. Yes.
A. -- area, yes.
Q. You're aware of that building?
A. I'm aware of that building, yes.
Q. But you did not search it?
A. I did not.
Q. And you're aware of the gatehouse or the office next to the gate, the very front gate on Figueroa Mountain Road, correct?
A. Yes.
Q. And that was an office that was not searched as well; is that correct?
A. I did not search that.
MR. SANGER: All right. Okay. No further questions.
MR. SNEDDON: Nothing further, Your Honor.
THE COURT: You may step down.
MR. AUCHINCLOSS: Your Honor, we'll call Jeff Klapakis as our next witness.
THE COURT: All right. Come forward. When you get to the witness stand, you may be seated. You're still under oath.
LIEUTENANT KLAPAKIS: Yes, sir.

JEFF KLAPAKIS
Having been previously sworn, resumed the stand and testified further as follows: 7249

1 DIRECT EXAMINATION
2 BY MR. AUCHINCLOSS:
3 Q. Good afternoon, Lieutenant Klapakis.
4 A. Good afternoon.
5 Q. You've previously testified in this case
6 that you were a lieutenant assigned to the Michael
7 Jackson case. During the month of January in 2004,
8 did you serve a search warrant on the home of
9 F. Marc Schaffel?
10 A. Yes.
11 Q. And where did you serve that warrant?
12 A. In Calabasas, California. At his residence.
13 Q. What was the date of the -- that the warrant
14 was served?
15 A. January 31st, .04.
16 MR. SANGER: Before we go any further --
17 yes, all right. Before we go any further, could we
18 approach the bench briefly?
19 THE COURT: Yes.
20 MR. SANGER: Thank you.
21 (Discussion held off the record at sidebar.)
22 THE COURT: (To the jury) Before we have any
23 further testimony, I have to hear some motions, and
24 not just as to this witness, but to several
25 witnesses that the District Attorney is anticipating
26 calling. And there's -- I don't see any way that we
27 could complete those this afternoon, so I'm going to
28 have to let you go home. 7250

THE JURY: (In unison) Oh.
(Laughter.)
THE COURT: I knew you would be disappointed.
So you don't come back.
THE JURY: (In unison) Oh.
THE COURT: And I'll see you Monday at 8:30.
Remember the admonitions.
Let me just say one thing to you. This is not unusual. When you get to the end of either side of the case, things -- it starts stuttering. Every case I've ever had, those -- the witnesses that are left are the ones that have something that I have to do, and it's just not unusual. I don't want you to think it is. It just sort of -- cases don't just ride out to the end smoothly and stop. At least not in my court. They always go bump, bump, bump. That's where we are; bump, bump, bump.
So I'll see you next Monday.
I'm going to just leave the stand for a moment until you're ready to start the motions.

(The following proceedings were held in open court outside the presence and hearing of the jury:)

MR. SANGER: Your Honor, before you start on the motion, I asked Mr. Dunkle to come over and sit in, because so many of these things were filed at 7251

the last minute and he's worked on responses, so I'd like to have him here. And he'll be here in a few minutes, but we can start without him, of course.
THE COURT: That's fine.
All right. The first item on the calendar is the plaintiff's motion in limine re admission of expert testimony on Battered Women's Syndrome. I deferred ruling. I would like to have Mr. Sneddon, whoever is handling the motion here, explain to me why this witness is necessary, what you intend to prove.
MR. AUCHINCLOSS: This is my motion, Your Honor. And given the enormity of the evidence concerning Janet Arvizo's 16-year abusive relationship at the hands of her husband, and given the fact that the charges and facts of this case fall immediately upon the end of that 16-year relationship, both sides have made the issue of this relationship central to this case.
The defense has even attempted to use this relationship to show that Miss Arvizo was somehow fraudulent in the J.C. Penney case by attempting -- I won't concede that they were successful, but they attempted to lead the jury to believe that some of her injuries were, in fact, caused by her husband.
So there doesn't seem to be any contention that both sides agree that this woman suffered at the hands of her husband. 7252

THE COURT: I guess the issue that I want discussed is what is the relevance here. The code section says that if you show relevance and you have an expert that will so testify --

MR. AUCHINCLOSS: Very well. I'll go straight to the point.

False imprisonment. Child endangerment. Personal verbal attacks. Death threats. Isolation. Hopelessness. Emotional abuse. These are all the central issues of domestic violence. They are also the central issues in this case.

Domestic violence evidence, expert evidence by a Battered Women's Syndrome expert, is designed to debunk misperceptions about women who have suffered this posttraumatic stress disorder. Women who have been raped, women who have been beaten, women who have been abused do not act in a -- in a predictive manner.

There are many misconceptions about how Janet Arvizo should act, given the stimulus of the defendant's conduct in this particular case.

Specifically -- these are problem areas for this jury that this expert will help them now to wade through. Specifically, why did she return to her abusers at Neverland? The jury needs to understand that. Victims of domestic violence virtually always return to their abusers.

Why didn't she go to the police? Why 7253

doesn't she report this? Victims of domestic violence -- this expert will testify, victims of domestic violence, when they're threatened, when they're abused, when they're taken advantage of, they virtually never go to the police.
Why didn't she make greater attempts to leave? Why didn't she just walk away? Those are the questions of people who wonder why these women stay in these domestic violence relationships. This expert will help this jury understand this issue.
Why she's still susceptible, why she's so gullible. Common traits in domestic violence cases. Why was she so easily manipulated? Domestic violence victims are routinely manipulated by the men who abuse them. Why did she continue to trust in people who had proven they were untrustworthy?
Another common trait, this learned hopelessness. That's the terminology that the experts use, "learned hopelessness"; that they become eternal believers in, "Well, you know, if I just tow the line, if I just do what I'm told, if I don't make any waves, if I don't make any fuss, everything will be okay."
Why did she act so helpless? A common question that we all have of victims of domestic violence and a common trait that's certainly associated with this disorder.
Why did she have -- continue to have hope 7254

and faith in Jackson when Jackson's people were conducting this conspiracy around her? Again, this sense of hope, trying to find some light at the end of the tunnel, trying to believe, wanting to believe. She wanted to believe that Jackson could help her, even when all the evidence was contrary. Why does she lie under oath? Now, here's an important point. The defense has placed that fact in the center of their attack on Janet Arvizo. They've charged her with perjury. They made a big deal about it. They questioned her extensively about that.

And this expert will come forward and tell you that victims of domestic violence virtually always or routinely lie under oath and protect their abusers. And that's exactly what she did in this case.

THE COURT: But I'm having trouble keeping up with you here. Are you talking at this point about her lying under oath in depositions about whether her ex-husband was abusive or not?

MR. AUCHINCLOSS: Yes, I am.

THE COURT: But just before that, you were attributing the -- it wasn't -- you were sort of placing Mr. Jackson in the position of a husband, weren't you?

MR. AUCHINCLOSS: Well, I am. I'm placing --

THE COURT: You made a big jump there.
MR. AUCHINCLOSS: Well, I did. And I'm saying that Mr. Jackson was in a position where he could exploit the vulnerabilities of a woman who suffers from posttraumatic stress disorder.
Now, the statute itself says that the common misperceptions regarding Battered Women's Syndrome is admissible to help the jury understand the nature and effect of the physical, emotional, mental abuse on the beliefs, perceptions and behavior of victims of domestic violence.
Janet Arvizo's beliefs, her perceptions and her behavior in this case have been called into question by the defense. And those beliefs, perceptions and behaviors were altered, permanently probably, during those 16 years of being a battered wife.
Now, there are some interesting parallels here, even though Mr. Jackson is not in a position of being a typical classic father figure in a family. I mean, there's the family overtones. There's the I'm-going-to-take-care-of-you overtones. There's certainly some interesting parallels here. But this is primarily to help the jury understand why Janet behaves the way she does. Many questions are asked about this, and questions that have been focused on by the defense.
And Janet behaves the way she does because 7256

of her history as a victim of domestic violence. Because of the stimulus that's provided, death threats, she reacts that way when she gets death threats. When she's scared, when she's upset, she doesn't go to the police. When she's feeling hopeless, she locks herself in a room and sits there on Neverland and doesn't go out and see anybody. She is -- is she paranoid? Yes, as most victims of domestic violence are.

THE COURT: The thing I'm having trouble with is that the case where this usually arises is in a case where a -- if it's a husband -- let's use that as an example. A husband is charged in court with abusing his wife, and she testifies, and there's a lot of inconsistencies because she didn't report it, or at other times she said he was abusive, he wasn't abusive, that type of thing, and you have --

MR. AUCHINCLOSS: Well --

THE COURT: -- the testimony to explain her -- it's not too different from the Child Abuse Accommodation Syndrome, where the child doesn't accurately report and you bring in an expert to suggest why that would be, you know, in the total scheme of things.

MR. AUCHINCLOSS: And you're exactly right.

THE COURT: In this case, that's not the situation at all. I mean, she's -- 7257

MR. AUCHINCLOSS: This is an unusual hybrid.
I couldn't agree more.
But as you pointed out, there's two tracks here for admissibility. One deals with the conduct of the defendant, and trying to understand Janet's conduct, which I think is just -- just something that this jury absolutely has to have to help them understand Janet. She suffers from a posttraumatic stress disorder. They should be apprised of that and the classic symptomology, which is completely counterintuitive. And we don't want this jury to make this decision based on misconceptions. And there are an abundance of misconceptions of how women should be behave and how they actually do behave when they've been abused by domestic partners.
But the other side, the other track, which is completely independent of this and which this evidence should come straight in on, is to explain why she didn't tell the truth under oath. It goes straight to that issue, which the defense has chosen to make a centerpiece on their attack on Janet.
So for the jury to understand why did she perjure herself, why did she lie about her husband, that's a highway to bring this type of evidence in so that the jury can understand, that's normal. Women who are -- who are abused do that. It shouldn't be held against her, and it shouldn't be 7258

used against her the way this defense intends to do, and the way they tried to do when they examined her, and the way they ultimately will do when they argue this case.

So on one hand, the defense has asked for it. They've asked -- they should have all the evidence on what the reasons why she perjured herself. But on the other hand, it's -- there are many enigmas about why Janet acted the way she did, and those enigmas are largely explained when people understand that she is a classic -- she's exhibiting the classic symptoms of posttraumatic stress disorder.

And I might point out finally, just that under the code, under the section here, this is not exclusively used in the case of Battered Women's Syndrome where there's a domestic violence, where the husband is charged and the woman is the victim. I mean, the code itself says "whenever it's relevant." So it's not a matter of whether it's normal or not. The question is, is it relevant? Does it have a tendency in reason to prove --

THE COURT: Well, it's just that it's -- the relevancy is very clear under the typical scenario.

MR. AUCHINCLOSS: Yes.

THE COURT: It's not so clear here.

MR. AUCHINCLOSS: But even in the cases, the cases don't always just go to that classic scenario. 7259

Sometimes it's used on the other side of the coin. Sometimes it's used to show why the woman assaulted the man.
THE COURT: Well --
MR. AUCHINCLOSS: And there's case law on that as well.
THE COURT: Yeah, and --
MR. AUCHINCLOSS: So --
THE COURT: I chose the example of the man assaulting the woman because that's the scenario we have in front of me.
MR. AUCHINCLOSS: Sometimes it's used to show that the defendant -- it's not only used to show the victim suffered from post-traumatic. Sometimes it's used to show the defendant suffered --
THE COURT: Oh, I see what you're saying.
MR. AUCHINCLOSS: When the woman is charged with murder, for instance, and an expert is introduced to show she suffered from Battered Women's Syndrome. So there are other cases. But I agree with you, it's not always simple, but we are not always confronted with simple facts for the application of the law. But I will say that it is abundantly clear that, under the defense's own intent and their own tactic in this case, they made it relevant, at a minimum, by charging her with perjury and parading that out in 7260

front of this jury.
So I would submit there are two very strong reasons that make this evidence highly relevant. And I don't think you can -- you can dispute the fact that many of her -- much of her conduct is counterintuitive, that -- and that it does fit within a pattern that is prevalent among women who are victims of this.
THE COURT: But you're saying that the expert's going to testify that not only does the spousal abuse accommodation theory explain why a person doesn't report, prosecute, et cetera, a person who is physically abusing them, and will say that that's equivalent to this case where --
MR. AUCHINCLOSS: Yes, she will say that. She will say that this -- this disorder, the symptomology of this disorder, is not isolated to the home. When they walk out of the home, they carry this disorder with them. When they are confronted in the world with the stimulus, the similar stimulus that they have in the home, such as death threats, such as false imprisonment, such as threats of child abduction, such as trying to obtain control, any act of power, isolation and control, which we have here, when they're confronting these types of influences, they react the same way they do in the home. The posttraumatic stress disorder goes with them wherever they go. 7261

1 And that's what this witness -- this expert
2 witness will testify to. She will testify to that
3 these types of incidences are -- are Janet suffering
4 from this syndrome. That this type of behavior
5 is -- and not specifically, but generally, because
6 this will be general testimony, as it should be.
7 It's to demystify the area. But she'll testify that
8 women do not leave this disorder when they walk out
9 of the house or even when they leave their husband.
10 So --
11 THE COURT: Okay. Mr. Sanger, are you going
12 to discuss this?
13 MR. SANGER: Yes, sir. Yes, sir.
14 We briefed it, and I think the Court has hit
15 one of the major points on the head, is that this
16 isn't relevant to this kind of a case.
17 But responding to what Mr. Auchincloss said
18 in an effort to answer the Court's question, we
19 didn't make her perjury relevant. She has committed
20 perjury, I think it's pretty clear, in this court
21 from the stand. And she has said things that are
22 preposterous, that are absolutely counter to the
23 other evidence in the case. And that's not because
24 she's a battered woman. That's because she lies for
25 gain.
26 I don't want to be unnecessarily harsh, but
27 let's face it, that's what this is about. She took
28 the Fifth so that she has that protection to not be 7262

cross-examined. But the Court is going to allow us to bring in evidence that she lied for gain on repeated declarations for money and got that money and continued to get that money, and lied and cheated her way through life. That is what she does. That has nothing to do with being a battered woman.

Now, the People say, well, they should bring this in and because Mr. Auchincloss says she's really suffering from posttraumatic stress disorder, which is interesting, because they specifically asked to exclude Dr. Hochman's testimony, who indicates that she is basically an antisocial personality disordered patient, person, who coaches her children to lie. Remember, Dr. Hochman was the one that said that, and that she lies for gain, and lied for gain in that case in the J.C. Penney's case itself. But he made a diagnosis after actually seeing her and evaluating her and testing her. If they're --

MR. AUCHINCLOSS: I'm going to object that that misstates the evidence, and this should be a legal argument rather than a factual one.

MR. SANGER: Well --

THE COURT: Overruled.

MR. SANGER: If they bring in PTSD and say that's what this is all about, and she can get up and say whatever she wants, obviously it proves too 7263

much. It's not relevant to this case. It's not relevant to the facts of this case, despite the heroic effort to stretch it. But it would prove too much. Anybody who claims that they were assaulted by their husband could come into court, lie in the trial proceedings before the Court, lie in countless other proceedings, and under oath, and then say, "I get a pass."

Now, there's nothing funny or nothing to be minimized about being the victim of any kind of violence, whether it's domestic violence or any other kind of violence. But it proves too much to say that therefore this witness, who Your Honor heard for five days -- and we'll address this maybe in an 1118.1 motion at some point here.

But without prejudging that, Your Honor heard this witness for five days. That is not the behavior of a shy, hopeless - what were the words? - a hopeless person who can't stand up for herself. She was perfectly willing to take Mr. Mesereau on as aggressively as possible. She has taken other people on in her history in that very same way. When she wants something, she will get it. There is nothing -- nothing shy about that woman that was on the tape that was trying to keep herself situated as close to Michael Jackson as possible, while denying that Jay Jackson even existed. There is nothing shy about this woman at 7264

any time. And she'll get up here and blatantly lie. If the Court says, "Well, you can" -- if any court said, "Well, you can bring in an expert to say this person gets a pass and they can lie," what's the point of cross-examination? What's the point of coming into court and having the jury hear these things?

Now, it simply proves too much. It's not relevant to the facts of this case. If they do intend to bring in something like that and claim that it shows PTSD, and therefore she's not able to tell the truth, what does that tell us? But if they're able to do that, then we should, of course, be able to bring in Dr. Hochman to say he knows exactly why she doesn't tell the truth.

THE COURT: Don't you think there's relevance, without conceding your position, though? I'm having trouble with you, just like I am with the District Attorney. There's two areas we're talking about. One area, the claim is that she was the victim of abuse by David Arvizo. And as the District Attorney pointed out in his argument, neither side seems to be -- that's not an area of contest in this case. You know, when it occurred, and all that, may be, but not that it actually occurred.

So then we have the actual impeachment by the defense of her testimony that Mr. Arvizo was

abusive by you, the defense, bringing in the depositions of the J.C. Penney case where she denies that he's abusive. And I don't want to go into the evidence at length, but there was a considerable amount of evidence relating to her responses in the J.C. Penney case, and then the -- you know, the final, ultimate statement by her that if she, you know, was at the point that he was finally arrested and removed from her presence, that she was able to go to her attorney and explain some of the untruths that she told.

That's one area.

Now, what's your argument, without drifting, please, as to the relevance of her -- of expert testimony explaining the Spousal Abuse Accommodation Syndrome in regard to that issue?

MR. SANGER: Or Battered Women's Syndrome.

THE COURT: Yes.

MR. SANGER: So, if I'm understanding the Court, the -- taking the argument -- and I understand the Court's advancing for the purpose of discussion, taking the argument --

THE COURT: You're giving me a discussion, yes.

MR. SANGER: Taking the argument that, while the testimony might not be admissible with regard to Mr. Jackson and any other conduct associated with people at Neverland, the argument may be relevant to 7266

explain what happened with David Arvizo and why she may have lied in the J.C. Penney's lawsuit.
THE COURT: Yes.
MR. SANGER: Okay. First of all, under 352, let's start there, the Court has to make the cut at some point on evidence that is going to come in to explain what is an issue in the case, but it is not the core issue in the case.
And the Court has made that determination with regard to Dr. Hochman, for instance, that we cannot bring in what we considered to be probative evidence. The Court did not say it was not probative. The Court said that you were going to exclude it, I take it, in part, on the grounds that it would be -- I believe the Court said on the grounds that we're not going to have a complete trial within a trial on all aspects of it.
So there does have to be a cut of some sort. And it seems to me that's a place where we can start with the discussion. Can they -- in a trial where Mr. Jackson is on trial for his liberty over what these people allegedly did, we're going to have an expert come in, whose testimony should really be limited to this very small area.
Now, I understand if the Court were to do that, Mr. Auchincloss would not be allowed, nor would anybody on that side be allowed to argue that this testimony explains away her perjury in this 7267

case or her perjury in other respects. But Your Honor would propose that somehow the jury be limited to that.
And so under 352, besides the undue consumption of time, you have the potential for prejudice to this defendant, to whom this witness would not apply at all, but the jury would not be capable of making that very surgical line, if you make a line surgically, but make that line very specifically. So it would cause prejudice, and it would cause undue confusion to the jury, besides the undue consumption of time.
Now, I want to address the relevance issue even more specifically, but I started with 352, because I think that really answers the question.
But going more specifically beneath that, to whether or not it's probative at all on this, Your Honor said we don't dispute that she was abused by her husband.
There's already been reference to the fact that there was a photograph taken of her where she was appearing to assault her husband with a knife. And she said it was all a game, but I will represent to the Court that we have a number of witnesses who say that she was the violent one in the marriage, and was, in fact, striking not only her husband but other family members, and she's --
MR. AUCHINCLOSS: I'm going to object that 7268

this is all irrelevant as to what she -- what Janet Arvizo is and what she may have done.
THE COURT: Overruled. Go ahead.
MR. SANGER: And we have a number of witnesses who we could call for that. Whether we will call them -- I'm representing they've been interviewed and that's what they say. Whether we will call them is a question of trial strategy and tactics, depending on where this all goes, of course. And there's evidence that -- well, suffice it to say, without going into the detail, there's evidence from third-party witnesses and family members to that effect.
Given that, if the Court allows her to now shore up her credibility as to why -- sort of a strange phrase, shore up her credibility as to why she perjured herself --
THE COURT: That's a phrase you've been choosing. I mean --
MR. SANGER: What the prosecution would be saying -- Your Honor argued this for them, I suppose, because we're talking about this narrow issue.
What the prosecution would be saying on this part of it, I suppose, is, "Look, of course she lied in J.C. Penney's because her husband's abused her and she's afraid." So then when she -- when she testified, she not only testified that her husband 7269

never beat her and she loved her husband, and they had a hide-away love nest, and there was all these other things that went along with that deposition, but she also felt compelled to testify that she was sexually molested and all the other things that came out in that deposition that were just inherently preposterous. And they would argue, "Well, she's a battered woman, so she tends to lie about everything if she lies about anything."
THE COURT: The expert on the Battered Women's Syndrome, doesn't the expert in that situation just explain why a person who's been the subject of abuse might not report it, might not report it accurately, might at one time say one thing about it and other times about another? That explanation doesn't extend to everything a person says thereafter to anybody, does it?
MR. SANGER: Well, it shouldn't, but I heard Mr. Auchincloss just argue that it does. However, focusing on the Court's argument, the question is what would the expert bring to this? The expert is not going to be able to substantiate the argument that Mr. Auchincloss made, and that's my point. The expert's not going to be able to say that she committed perjury just in general because she's hopeless. The expert can simply say there are syndromes where a woman, or a man, or anybody that's subject to a Battered Person 7270

Syndrome, usually a woman, hence the name, but where a person is subject to this syndrome, they are beaten down, they're dependent on the person, they feel hopeless. And the theory goes, therefore they don't necessarily avail themselves of conventional means to resolve the problem. They tend to go back to the person, things that Mr. Auchincloss said are common -- I won't adopt them all, but those that I'm repeating are common denominators in the expert testimony. And that will explain the traditional case where, in fact, a woman doesn't go report it, and when asked, after being beaten, says, "No, I wasn't beaten."

It just doesn't explain the facts in this case. When I say, "this case," I mean the J.C. Penney's case. It certainly doesn't explain anything in this case. But in the J.C. Penney's case, it just doesn't explain the facts that are in that case, where she will go in for gain and make up a big story about all sorts of things for gain.

And then remember, Your Honor, she doesn't -- it's not that she's afraid to report her husband. She reports her husband five days after they get a settlement by mediation, while they are still deciding how the money's going to be split between them. And during the months that ensue, they can't decide, the insurance company files an interpleader -- I don't know if they actually filed, 7271

but stated in correspondence they're going to file an interpleader because they don't want to have anything to do with it. She reports him then for sexual abuse. And he finally says, "I give up. I'll just take 5,000 for my divorce lawyer and you can have the rest." And that's not a battered woman.
THE COURT: You're really not addressing the issue. But --
MR. SANGER: I'm trying.
THE COURT: Let me ask you the other question.
MR. SANGER: I'm sorry.
THE COURT: The area I cut you off on -- I just wanted to hear the argument related to my hypothetical, so I cut you off from arguing why it shouldn't apply, if the expert actually purported to be able to apply it to the -- a situation outside of the marriage or the relationship such as the Michael Jackson connection that she has. I'll let you argue that a little bit, because I wouldn't let you argue it.
MR. SANGER: All right. And not wanting to decline that invitation, could I make just one closing remark on the other issue?
THE COURT: If it relates to my question, yes.
MR. SANGER: And I want to tie it to the 7272

question. I think that is the question, is Your Honor says if it was limited to that issue, I suppose the question is how do you limit it to that issue? And that's why I come back to the 352, which is if you let in a battered woman expert on that, then we have all this other evidence as to whether or not she was actually battered, and whether or not she was behaving in accordance with a Battered Women's Syndrome, which would open that whole area substantially more than the Court, I think, intends to have it opened at this point.

Having said that -- that was the point of going on about the additional facts with regard to that point.

Having said that, the -- the greater argument, as it pertains to Mr. Jackson, who, after all, is the person we're representing -- we're not taking David Arvizo's side or not. You know, that's something that either did or didn't happen. The question is whether or not Janet Arvizo is telling the truth in this case when she's accusing Michael Jackson and other people at Neverland and elsewhere of doing things to her.

And this syndrome, as it's typically described in the testimony, would have no application to this picture, despite Mr. Auchincloss's argument that basically explains perjury in general. 7273

Not only that, we still do not have an offer, specific offer of proof or a report of anything from a Battered Women's Syndrome expert. And as far as I know, they haven't elected which one of the number that they listed on their list they were going to actually call.
So we don't know what they're going to say. We have to assume they're going to say no more and probably no less than they generally will say in domestic violence cases or cases in which the parties, whichever one is the victim of the ultimate offense, where the parties are husband and wife or boyfriend and girlfriend, and they have that kind of a relationship.
So if they give that kind of testimony, that kind of testimony will not apply to this. That means that they are expecting to call somebody who is either going to say that, and therefore there's no relevance, or they're going to call somebody who's going to expand on the theory beyond any measure upon which it's been approved to explain that somehow this can give an account of what happened here for five days.
THE COURT: Have you ever seen a case where it's been applied, this testimony, to anything other than the people involved in the relationship?
MR. SANGER: I have never seen such a case. I have never seen such a case reported. 7274

And let me just ask very quickly. Did you see a report of this?
MR. DUNKLE: No.
MR. SANGER: And Mr. Dunkle, who is religiously researching some of these things, particularly the last-minute motions, has tried to read every case there is on all of these things.
MR. AUCHINCLOSS: If the record could reflect, Mr. Dunkle shrugged his shoulders.
THE COURT: Clearly he said, "No."
Right? I heard him absolutely say, "No."
MR. SANGER: I'm a battered defense attorney.
THE COURT: The way he was shrugging his shoulders was in fright. It was, "Don't ask me."
(Laughter.)
MR. DUNKLE: That's correct.
MR. SANGER: As a battered defense attorney, I may not be able to hear him clearly. I guess that's --
THE COURT: Okay.
MR. SANGER: The point is, I just don't see how it can apply. If the Court has any other questions, I'll answer them. Otherwise, I'll submit it, Your Honor.
MR. AUCHINCLOSS: Two comments.
THE COURT: I'll let you make your two comments, but let me ask you the same question. Do 7275

you have any case where this has been allowed or used other than between the two parties and the typical domestic violence situation?
MR. AUCHINCLOSS: I don't have a reported case.
THE COURT: Do you have any unreported case?
MR. AUCHINCLOSS: Um --
THE COURT: Oh, you're not supposed to cite those, are you?
MR. SANGER: Rule of Court 977, but the delay answered the question.
THE COURT: You should have let him make his answer and then move to strike.
MR. AUCHINCLOSS: But the bottom line -- one of my two important points is, number one, this is apples and oranges to Dr. Hochman, who would testify specifically about Janet Arvizo. This is not going to be testimony about Janet Arvizo.
THE COURT: No, I understand that.
MR. AUCHINCLOSS: This is just general testimony. Mr. Hochman would testify about specifically Janet Arvizo and it's inadmissible for that purpose.
THE COURT: You're getting --
MR. AUCHINCLOSS: Putting that aside, I want to make that point, because it's not prejudicial to the defendant. It's not about the defendant. It's merely some information that the jury can use or not 7276

use. It's up to them. If they think it applies to this case, no problem. If they don't think it applies, they're the arbiters. So in terms of prejudice, really it's -- all it is is informing the jury of the truth about a certain syndrome.
Secondly, as far as this thing about perjury, I've never said that this gives her a pass to commit perjury. And Battered Women's Syndrome does not provide any exculpation of an individual who lies under oath except for the individual who lies about their mate. That is the one area, when they say, "He didn't beat me." When they say, "He didn't do anything." When they say, "He's a great guy. Oh, he's a good person. He's an honest person." When they say those things, that's where they do get a pass, and that's the only area. And that's what this witness would testify to. And that's why it's so -- it's so important and so probative in this case.
Thank you.
THE COURT: This is an area that has caused me a great deal of concern. Probably why I didn't rule on it initially, I wanted to hear all of the evidence before making the ruling.
And I think this type of evidence is valuable in domestic violence cases for jurors to help understand the dynamics of a particular relationship involving violence, but I'm not going 7277

to allow it in this case. It may or may not explain her -- or a person's conduct in a similar case, such as the J.C. Penney case, which was not a domestic violence case between her and her husband either, as this one is. And I think it would be a mistake for me to allow that type of evidence on what is a peripheral issue in this case, i.e., whether or not she told the truth in the Michael Jackson -- in the J.C. Penney depositions.

The Court will also find, under 352, that in this case the prejudicial effect far outweighs the probative value of the information, in that the jury might well confuse the purpose of the testimony, which would be -- the only way I could see it at any time would be to explain the relationship of the abused and abusing couple.

And I also think that, under 352, to allow the evidence would force the defense to approach the abuse in a different area, a different way, which would cause an undue use of time and prolong the trial unduly.

So for all those reasons, the Court will deny the use of the expert on the Spousal Abuse Syndrome.

The next issue we'll take up is the plaintiff's supplemental motion for admission of additional evidence pursuant to Evidence Code Section 1108. 7278

MR. SNEDDON: Judge, I'll be brief. I just want to correct a couple of misconceptions in the response by the defense to this motion.
Mr. Kassim was on the original witness list and has been since the beginning of this trial.
Secondly, the discovery with regard to Mr. Kassim's statement was provided, along with all the other materials, back in October of 2004 of the statements that he made to police in 1994 -- in 1994, in May, during the course of the first investigation involving Mr. Jackson. These have been known to the defense since that period of time.
With regard to the motion itself, I will indicate to the Court that he was not on the list of the 1108, because in my view, with regard to the observations that he made, as I've indicated in the brief, they were corroborative of the testimony of Mr. Chacon and did not involve the actual seeing of any misconduct on the part of any individual. And frankly, it didn't dawn on me that he couldn't just come in and testify to those events. However, when the Court asked me to do it and put it in writing and defer his testimony, I was more than glad to do so.
But this -- so this is not something that we're trying to bootstrap into something we didn't plan to do a long time ago. He's been on the witness list, items have been discovered, and so we 7279

filed a supplemental motion. And I believe that the evidence is probative and is admissible under the code section and certainly is -- sets a stage and corroborates the testimony of Mr. Chacon in terms of the fact of the defendant being with the children that were mentioned by Mr. Chacon, and the events as mentioned by Mr. Chacon, and then the corroboration of the incidents by finding the swimming trunks in the rest room when he went to turn the lights off immediately after the defendant went from that position to the house.

I'll answer any other questions that the Court has, but that was -- I wanted to explain those differences between our position and the defense's position on the factual issues in terms of what was and was not provided.

THE COURT: Okay. Counsel?

MR. SANGER: Yes, I don't know that there's -- that there is a dispute, nor did we intend to say there was a dispute about what Mr. Sneddon said.

All of the people that they could find in the Abdool, Chacon, McManus, Domz and Bagnall vs. Jackson case, the civil case, all of those plaintiffs were listed as potential witnesses in this case on the December 6th witness list, as I recall. If it wasn't that one, it was the one shortly thereafter. That was not our complaint. 7280

Our complaint was that Abdool was not listed in the 1108 -- specific 1108 motion where the government spelled out what they intended to prove.

It has been and continues to be our contention that the government is required to turn over witness statements of witnesses who talk to the government, whether it's police officers or district attorneys. And our concern is that we had reports from 1994. We've had testimony, of course, from this Mr. Abdool in 1996 or .7, and that was involving the case I was involved in in representing Mr. Jackson, but we don't have any current reports. And it's just hard to imagine that any of these witnesses -- and I'm taking just a moment, because this applies to other witnesses that will come up, that any of these witnesses from times gone by would just be called to the stand cold, without even so much as a reinterview. So that was our concern, so that was what we were trying to express.

And without anything new, and without anything by way of an offer in the original 1108, all we have now is the new offer, which is not based on declarations, as so many of these motions are. They're just things that are said in the motions, and the government wants to call Mr. Abdool for that.

This goes far afield. The Court was limiting the testimony under 1108, recognizing, I 7281

believe, that 1108 evidence can be very distracting to the jury for the same 352 reasons that we've discussed before, and the Court made an effort to limit it, my belief was, to people who saw some actual acts or purported to see some actual acts that would amount to actual evidence as opposed to circumstance and innuendo.

And not to go on about all the details of Mr. Abdool's testimony and whether or not it's been refuted by his own words, which I can indicate to the Court it has been, but aside from that, you're talking about a tangential witness to shore up another witness who has testified here, and we're turning the 1108 into more than it should be turned into.

This still remains a balancing act, and the Court has discharged that duty to balance by attempting to limit the 1108 testimony so the jury could hear what might be important to hear for the purposes set forth in 1108 and not to allow 1108 evidence to overtake the significance of the actual evidence in this case of guilt or innocence.

And so I think that expanding it any further would be a mistake, and I think it would be -- it would be harmful, be prejudicial, for all the reasons under 352, consumption of time, confusion to the jury, and prejudice to the defendant.

Thank you. 7282

MR. SNEDDON: Your Honor, I just want to make one comment and I'll -- with regard to Mr. Sanger's position.

I think that the -- there's three incidents, and I tried to be specific about the incidents involved in the offer of proof. And clearly, my take on it, and has been from the beginning, that the first two incidents that really frankly involve relevancy issues more than anything else, and that they are like having multiple people see the same events and you're allowed to call people in to testify to certain portions of what they saw during the course of those events.

Clearly, I think the third incident is one that is more akin to the 1108 and 1101 kind of evidence that's been before the Court. But clearly, I think the first two incidents are ones that are more, in the sense, relevant because they corroborate Mr. Chacon as to significant events that he's testified to in this case.

And there's been a -- an attempt by the defense to claim that this evidence was fabricated based upon his involvement in later suing Mr. Jackson. And I think in fairness to Mr. Chacon, when there's a witness out there who can testify that he was also there that night and he also saw the same things that Mr. Chacon saw, in terms of the setting for the event and placing Mr. Jackson with 7283

the child at the time that Mr. Chacon says, that that's highly relevant evidence that this jury should be presented with.

So I think there's a difference in the basis for which the first two incidents would be admissible as opposed to the third.

And I'll submit it.

THE COURT: You know, I want to take a couple of minutes to read the briefs again on this. I'll take a five-minute recess.

(Recess taken.)

THE COURT: What department is this? Where are we?

(Laughter.)

THE BAILIFF: 8.

THE COURT: Okay. On this plaintiff's motion for admission of additional evidence pursuant to 1108 and 1101(b), I am going to deny the request to allow the -- what I'll refer to as the bedroom incident, which is your third incident.

I think I will allow the evidence relating to the -- what you call the bathroom incident, the swimming trunks. And the second one, the hug, that will be allowed under 1101.

Then the next item on the Court's agenda is the admissibility of certain testimony of several of the defense proposed witnesses.

I have a way of sort of streamlining this 7284

one. I can't tell how to rule without knowing why you would offer a certain witness in what regard. This is evidence that what you want to do is produce employees who will declare that they never saw Mr. Jackson touch a child inappropriately or something, you know, some type of evidence. And it's, generally speaking, negative evidence, you know. We can call a million people who never saw him do that. But if there's some way of advising me and the prosecution in advance that a particular witness was in a particular situation, it makes that not seeing something germane, then we have a different situation, right? Do you understand what I'm saying?
MR. SANGER: Yes.
THE COURT: If you could give me the facts as to a -- I don't know, maybe it would be a situation where the District Attorney had a witness that said, ?I saw such and such happen,? and you had a witness that was there in the vicinity that didn't see such and such happen, then that becomes relevant.
MR. SANGER: Yes.
THE COURT: Does my streamlining really work?
MR. SANGER: No, it didn't work, Your Honor.
THE COURT: All right.
MR. SANGER: I'm here to prove that point.
THE COURT: Go ahead. 7285

MR. SANGER: No, I understand what the Court's saying. Certainly that streamlined version -- I think there's no question -- if they say at eleven o'clock in the morning on the 1st of whatever, somebody was standing outside the theater and something untoward happened, and we have an employee, for instance, who was working in that vicinity at eleven o'clock and was vigilant, and we can say he was looking around and he never saw any such thing happen on that particular day, clearly that's relevant. I mean, that wouldn't be a question. So to the extent it's streamlined to that extreme, I mean, obviously --

THE COURT: That's an extreme situation.

MR. SANGER: But I think that the kind of evidence that we are talking about is much more -- is much broader than that. There will be evidence of that sort. But there's also evidence of people who, for instance, worked at the park, the amusement park, saw children on a regular basis, saw Michael Jackson with children on a regular basis, some of whom saw the Arvizo children, some of them who did not see the Arvizo children, per se. They may have seen them, but they didn't see anything particular with regard to those children one way or another, but were able to say that they have seen Mr. Jackson on a regular basis with children and never seen him 7286

do anything inappropriate. There are also people who would say that they did not see children who were --
THE COURT: Do you think that's character testimony? Now you're having people testify to a trait of character. Do you want to put his character in issue for the trait of, you know, whatever?
MR. SANGER: Well, in essence, his character has been put in issue and that was part of what we briefed. 1108 evidence is -- the way 1108 is written and the way it's been interpreted, although we have thought -- I say we. You know, the defense bar in general and a lot of legal scholars have thought that it really went overboard. It's been interpreted as propensity evidence. That's character evidence. If they're allowed to introduce some evidence of some events from 12, 13, 15 years ago for the purpose of showing propensity, which is what 1108 allows, we should be able to counter that by saying, no, there is no propensity.
And when they've been allowed to introduce evidence of children running amuck, this is not character as to Mr. Jackson, but you've heard the testimony elicited by the prosecution that there are children running amuck and totally unsupervised and out of control. Some witnesses say that. And other witnesses say, other than particular children, like 7287

the Arvizos, for instance, children were not running amuck, there was supervision, a certain amount of decorum. I think those are relevant. That's not character evidence as to Mr. Jackson. That is -- that is evidence that's directly offered to refute the evidence that was put in by the prosecution.
So if we take those two different categories and talk about those -- let's take the last one first. Let's assume -- let's assume we put on a witness who worked at the ranch in the public areas and saw children on a regular basis and said, "I've seen children on a regular basis there. I have not seen any children under the influence of alcohol. I had the opportunity to observe." Of course there could be a foundation objection. But assuming that there is a foundation, survives that, they have an opportunity to observe and they say, during the relevant time periods, "I saw dozens, hundreds of kids," whatever it is, "and nobody was under the influence," that's evidence we should be allowed to present, because it directly refutes evidence that was presented by the prosecution.
If we have evidence that -- so that's that category, and I think that's pretty simple. If we have evidence with regard to Mr. Jackson behaving appropriately with children and providing -- you know, not doing anything inappropriate in his contact with them, that 7288

counters the 1108 evidence, the propensity evidence.
THE COURT: Well, I think what I'll do is
I'll let you -- what I would do is let you, as to
each witness - and we're not going to do it now, but
either in through some written paragraph or through
some offer of proof before they're called - tell me
the basis, because I see some of those, but, you
know, the example you just gave me, an employee who
worked in the area of -- observed all these
children, never saw any of them drinking, you know,
if you had the ability and it was an area where they
would be seen if they were drinking, you know, then
I think I could -- I would go along with that
employee. But, you know, if he's a ranch hand and
comes in and out of the ranch occasionally and says
he never saw anyone, we're starting to talk about
people who wouldn't have an opportunity.
MR. SANGER: And that would be a foundation
issue.
THE COURT: So I think I need a better -- and
I would allow the D.A. to address each one, too.
It's not just showing me, but -- the general scheme
of things, there has to be something specific here
to make it relevant. Just plain negative testimony
isn't going to get it.
MR. SANGER: I understand.
So what the Court is saying, we have to show
a foundation for the observation; that if the 7289

1 foundation is that there's adequate opportunity to
2 observe and that it's relevant to the area or the
3 time period.
4 THE COURT: Yeah. Something that makes the
5 fact they didn't see it relevant.
6 MR. SANGER: Right.
7 THE COURT: Which is -- and I think your
8 alcohol example is a good example of something that
9 I would allow.
10 MR. SANGER: All right. And -- and I don't
11 want to argue with the Court, and I'm not, but as
12 far as --
13 THE COURT: And just like you're not supposed
14 to talk over there by the witness stand, so you
15 always remind yourself of that right before you
16 start talking.
17 (Laughter.)
18 THE COURT: That saves me from reminding you.
19 (Laughter.)
20 MR. SANGER: It provides a warning,
21 actually.
22 THE COURT: Yes. Could I go direct to
23 contempt from there? Or -- go ahead.
24 (Laughter.)
25 MR. SANGER: Well, I'm just a little
26 concerned that we're sort of in the position of
27 having to make an offer of proof on all these
28 defense witnesses. 7290

THE COURT: Just the ones relating to the negative testimony.
MR. SANGER: Yeah. And there may be -- I mean, we'll have witnesses who'll have percipient testimony on very particular things for which there would be no question. And they might also say something like that. It puts us in a position of just about every witness that worked at the ranch that we're going to call, because we're not going to call people that spent their entire time up at the administration building or over at the zoo --
THE COURT: I don't think it's burdensome to ask you to give me less than a paragraph. Just something.
MR. SANGER: Not overburdensome to me, but Mr. Dunkle, he's young, so he can take it. I say that facetiously. If the Court requires it, obviously we'll do it.
THE COURT: I think I do.
MR. SNEDDON: Judge, can I have 30 seconds on this issue?
THE COURT: Well, I thought you were winning, but if you want to --
MR. SNEDDON: No, I'm winning, but I want to make something very clear that I think needs to be very clear on the record on this issue that may have not been clear from Mr. Sanger's remarks, but what's abundantly clear from the Court. 7291

I couldn't agree more with the Court, and I couldn't agree more based upon the defense's own case, the Calpine case. That if they attempt to put people on the witness stand to testify to Mr. Jackson not -- not seeing Mr. Jackson molest some kid, that is opinion -- lay opinion testimony of character and opens the door for us to do the have-you-heards.

And I want to make it clear now, so that -- so they don't say I'm doing something different later, that's not -- that has nothing to do with 1101 or 1108. That's for everything that contests the credibility of that witness's lay opinion with regard to Mr. Jackson's character trait for deviancy or nondeviancy. And so I just want to make it clear today that if that's where they go, that's where we're going.

MR. SANGER: I want to make it clear that that's not clear, because what Mr. Sneddon said was lay opinion. If you bring somebody up to talk about an opinion, that's one thing. But if you say, "Did you see specific conduct during the relevant time period," that's not opinion as to character. And when we talked about 1108 being a type of character evidence, it is propensity evidence. It's not opinion.

THE COURT: It's not character evidence under the legislative approach. 7292

MR. SANGER: That's correct.
THE COURT: It is propensity evidence, and it's an unusual statute, and California is one of the few states that has it. But it's been held constitutional, and we go by it.
MR. SANGER: And there it is.
THE COURT: But it's not character evidence.
MR. SANGER: I mean, I was speaking in general terms. When you respond to propensity evidence, which says there was conduct that occurred, and you respond by showing that there is conduct that is inconsistent with that, that is not a lay opinion that's offered as character evidence. So Mr. Sneddon getting up making the remarks, it was welcome, because if there is any question --
THE COURT: I think he was responding to your -- you argued more broadly than I think you performed. In other words, you argued, "Well, Judge, 1108's character evidence, so we can put on character evidence."
MR. SANGER: Yes.
THE COURT: That's what you argued.
MR. SANGER: That's why I say, I welcome that, because when I was saying it, I didn't mean it --
THE COURT: I was just tipping you off, you know.
MR. SANGER: Well, there you go. 7293

But in any event, just so we're clear --
THE COURT: Okay.
MR. SANGER: -- Your Honor, it is not character evidence. This is our position. It's not character evidence to bring in specific acts.
THE COURT: You're telling me that you're not going to offer character evidence.
MR. SANGER: That's correct.
THE COURT: All right.
MR. SANGER: And if we do, we will and we'll let you know. But what we're talking about here is not character evidence.
THE COURT: Now you're telling me you might offer character evidence.
MR. SANGER: Speaking as the -- as a member of a group, we have to decide at some point, and if -- in other words, to be serious about it --
THE COURT: I won't hold you to anything. Don't worry about that.
MR. SANGER: Okay. If we introduce character evidence, it will be of a different character.
THE COURT: I think the discussion just got way off track on the character evidence issue, and I think I probably started it.
Okay. The next item is the motion to quash the subpoena for Manuel Ramirez.
My thought on this is that I'm going to deny 7294

the motion to quash, but I'm going to ask the
defense if they can accommodate this person. He's
in the military. He needs to move on. Can you put
him somewhere at the beginning of your case?
MR. SANGER: I had offered to do a
conditional exam, and I say that's an offer. The
prosecution opted to seek to quash first. I don't
know that they would -- given the Court's ruling,
that they would refuse to do a conditional exam, but
that may be one way to take care of it. And we can
talk about that. If that doesn't work, we will try
to accommodate him.
THE COURT: Counsel, you're -- you stood up
after I ruled.
MR. ZONEN: Actually, I was standing before,
but I'll be happy to go sit down at this point, if
you would like.
I'm not agreeable to a conditional exam.
They want to do that because they have no idea what
this person's going to testify to. That's why they
want to do a conditional exam.
He doesn't have any information on this
particular case, and he was subpoenaed because he's
the boyfriend of the victim's sister. That's all.
Now, if they want to put him at the very beginning
and put him on the witness stand, they can do that.
They won't. They're not going to call him as a
witness in this case because they have no idea what 7295

he's going to say.
MR. SANGER: We do have an idea, and if Mr. Zonen tells us that this witness is not saying something, he's making a representation that he has a statement of a witness he hasn't turned over. I think it's rhetoric. But if it's more than rhetoric, I want that statement of this witness that he has nothing to say, because I believe, from all the evidence that we've presented, he does.
THE COURT: There appears to be evidence that he has something to say, and that's why I denied the motion to quash.
And now back to my question. Can we accommodate this young man somehow? He's in the military, we're holding up his transfer, and I would like to help him get on with his life in the Marine Corps -- is it the Marines?
MR. SANGER: Yes, sir.
THE COURT: They won't let him go anywhere until this subpoena is taken care of.
MR. SANGER: I understand. We will talk. There's a colonel who is representing him, and we will communicate with the colonel and see what we can do.
THE COURT: All right. The next one is the defendant's motion to admit evidence of alleged sexual conduct which, in accordance with the Penal Code, had been filed -- or Evidence Code had been 7296

1 filed under seal.
2 Who is going to speak first?
3 MS. YU: Thank you, Your Honor.
4 I didn't realize we can have a hearing on
5 this, because I thought it was under seal.
6 THE COURT: It is under seal, and I've read
7 the points and authorities. And if you have
8 anything to say, you have to say it without --
9 MS. YU: The issue presented by this motion,
10 Your Honor, is critical to the defense, because it
11 really presents whether Gavin and Star are telling
12 the truth when they say Mr. Jackson inappropriately
13 touched Gavin or masturbated Gavin, because we're
14 here to seek the truth. And the truth of the matter
15 is that they themselves engaged in the very act that
16 they are accusing Mr. Jackson of having committed.
17 They themselves --
18 THE COURT: What I was trying to ask you when
19 you interrupted me was not to mention the acts
20 that --
21 MS. YU: I'm sorry. About the date in
22 particular?
23 THE COURT: I just asked if you had any
24 further legal argument on it. I know what's
25 involved.
26 MS. YU: No, Your Honor.
27 THE COURT: All right. Anything from the
28 People? 7297

MR. AUCHINCLOSS: Yes.
One thing that I think is very important for the Court to focus on in the analysis of whether to conduct a hearing, move forward under 782, is to make certain that we do not obviate the intent and purpose of 782 in the method in which we proceed.
One of the complications in this case at the present time is the fact that the victim has been cross-examined about this subject matter. The reason that's complicated is because if the victim answers in the affirmative, then the evidence comes in doing an end run around 782. In other words, 782 is obviated if the victim admits the conduct. If the victim denies the conduct, then the defense says, "Well, we want to get it in because we want to impeach him with this conduct," irrespective of 782.
Now, the intent of 782 is specifically to allow this evidence in when the conduct itself is credible or deals with -- goes to the credibility of the victim in the case. Not to impeach him about some statement. But when that conduct impeaches the victim for purposes -- I shouldn't use the word "impeaches," but when that conduct imputes the credibility of the victim by virtue of its relevancy, it has some similarity, some aspect that helps the jury understand whether or not this victim's being truthful.
Now, the cases on this which we've cited, 7298

the first one -- I don't know if we cited this case, but it's of course before we get to the next stage of 782, which is an open hearing, calling witnesses, that the defense has a burden to show affirmatively under oath the relevance of the complaining witness's ascribed sexual conduct and they must show that this is not evidence that's just designed to deprecate the character of the victim.

Secondly -- and that is People v. Rios at 161 Cal.App.3d 905.

Secondly, the case of People vs. Woodward, at 116 Cal.App.4 281, says that the conduct itself must be similar to the charged crime.

Now, I won't go into the facts, but I suggest to the Court that this is not similar conduct in terms of the actual act itself. There may be a similar description of events, but there is one that involves two people and one that involves one.

Finally, one case that we did cite for the Court is the Harlan case, which specifically states that this type of conduct is not relevant. It's not -- it doesn't go to the blameworthiness of the victim.

So going back to my original problem, if we look at the conduct itself that we're -- that the defense is trying to get in, under Harlan, the courts hold that that conduct, in and of itself, is 7299

not really relevant to the credibility of a victim in a child molest case. The reason it's not relevant is because it's common and it's something that could be ascribed to any child victim.
So if this conduct is not relevant, I suggest it would be unjust and unfair to let it in to impeach the victim's statement denying this conduct.
It's a little convoluted, but if you follow me, if we do that, if we say that the defense gets to cross-examine the victim about it, and the victim denies it, then the protections of 782 are completely obviated and the purpose is ignored.
So our point is, is that really the only way that they can get this evidence in is by showing that this type of conduct is sufficiently directly relevant to the facts of this case, even assuming it's true. And the case of Harlan specifically states that this type of -- this type of conduct does not pass muster and should not be admissible.
Thank you.
MS. YU: This conduct is relevant, Your Honor. It is relevant because Mr. Jackson is charged with masturbation, and that is the very act that deals with this particular motion. And it goes directly to the credibility as to whether they're telling the truth. Did they, in fact, do it themselves, or are they blaming now Mr. Jackson for 7300

the very act that he never did?
Star got on the stand and he -- he testified
under oath that he looked at these adult materials
outside the presence of Mr. Jackson, when in fact
they looked at the adult materials, they looked at
other explicit materials, and engaged in the very
act that they're blaming Mr. Jackson for. It is
credible to this case.
THE COURT: All right. Thanks.
Normally Evidence Code Section 782 does
require a hearing outside the presence of the jury
to determine what the complaining witness would say
about that. But in this case, the complaining
witness has already been questioned on the behavior,
so the necessity of a 782 hearing is dissipated. We
don't need one now.
I find that the evidence is relevant based
on the -- particularly in view of the amended
declaration as to the time frame, which I thought
was critical to the relevance. So the evidence will
be allowed.
Let's see, the next item is Mr. Jackson's
request for clarification of the Court's order known
to prosecution and unknown to defense.
The Court did provide you with a copy of the
minute order of March 11th, 2005. And I don't want
to hear argument on this.
MS. YU: Okay. 7301

THE COURT: This is for my clarification. I don't see any need for it. But I have ordered that the defense may not attack Gavin's credibility with evidence that he maintained an e-mail account with the password "Sexy" on it. That's prohibited. And the second one was -- stated that I would only permit the information that was submitted with respect to Rio's testimony, which was referred to as the male witness in the minute order. So that's -- that's -- I don't think any further clarification is necessary. It's -- is there?
MS. YU: I'm sorry? I apologize.
MR. MESEREAU: Is there any other clarification that's necessary?
MS. YU: No, Your Honor. I believe we're informed about the password. That was the only clarification.
THE COURT: They're all waving at you. So that takes care of the clarification.
MS. YU: We were seeking clarification as to Mr. Mesereau's cross-examination of Gavin on the e-mail account, as well as the passwords, because he did testify about the various passwords.
THE COURT: But I prohibited this area.
MS. YU: Yes.
THE COURT: All right. The next item was the plaintiff's memorandum regarding admissibility of evidence of criminal charges pending against witness 7302

Chris Carter.
MR. SNEDDON: Judge, let me take this opportunity to indicate to the Court that Mr. Carter's attorney, Mr. Segal, is here - he's in the front row. Jeff Segal - and might want to address the Court with regard to his advice he's given his client with regard to this case. I will indicate to the Court that --
THE COURT: Counsel, if you'd like to come in.
MR. SEGAL: Thank you, Your Honor.
THE COURT: Someone will give up a seat for you, I'm sure.
MR. ZONEN: Why don't you sit up here at the table.
MR. SNEDDON: I just want to indicate to the Court that the representations that have been made in the brief with regard to the fact, the key fact, one of the key facts, I think, in the Court's determination about how much can be brought before the jury in this particular case, Mr. Carter is testifying and he's testifying on his own, and he has not been promised anything at all with regard to his testimony.
MR. SANGER: Well, on that issue, the reported decisions are replete with cases where the representation was that there was no promise of leniency. And we've had very little time to respond 7303

to this, so I'll ask leave to do this off the cuff, but if the Court wanted some citations to the cases, I could certainly give them.
The cases are numerous where there has been no promise of leniency, or that's been the representation, and then when it comes time for sentencing, the witness later, in his own case, receives a lenient sentence. There are a number of habeas corpus cases where habeas corpus was granted based on that exact scenario.
I am not disputing at the moment what Mr. Sneddon has just said, but the fact of the matter is, that anybody who's facing both state and federal charges and very serious charges, bank robbery and robbery charges, may well have an inclination to please whatever government official comes before him.
And here we have the District Attorney of the entire County of Santa Barbara who is handling this case. There's no question this is a very high-profile, big case. There is no question that a person might believe that by cooperating with Mr. Sneddon in the case of the century de jour, which will be superseded, I'm sure, by some other case next week or next month, but right now that's the way it was perceived and it would be perceived to a witness like this, he may feel, by cooperating, that somehow this is going to redound to his benefit with 7304

other prosecutors.
We went back to the Gilio case, because that's sort of the root of all of this. The United States Supreme Court made it clear that the potential for influence of a witness's testimony is not up to the District Attorney to decide. It's up to the jury. And therefore, the defense should be allowed to explore that, to know about it. This is Gilio and that's the genesis of these cases. And the jury should be allowed to know about it so that they can evaluate whether or not there's any influence.
It's just -- even though this has already happened with Janet Arvizo, I mean, this is extremely unusual that the prosecution would come forward and say, "We want to avoid" -- "We want a witness to testify for us, but we want to prohibit the defense from fully confronting and cross-examining that witness."
And the Court has fashioned a remedy with regard to Janet Arvizo, which obviously was over objection, but this is beginning to add up, because following this motion, they've got yet another motion. They've got another witness they want to call who wants to take the Fifth and the jury's not supposed to know about it.
This is getting to be pretty weird, to put it in legal terms. All right? It's very, very 7305

unusual. It's gone beyond unusual to weird. I mean, you just cannot put a defendant in a position where the historic right to confront and cross-examine is being cut off or circumvented not only once, but twice and three times. This particular situation is particularly egregious. I mean, we've got somebody who's charged with bank robbery, and, you know, this is -- this is not something that the defense should --

THE COURT: So what are you asking?

MR. SANGER: Well, I think if the witness is going to -- as we said with regard to Mrs. Arvizo, if the witness is going to be taking the Fifth, then their entire testimony is subject to being stricken. I know the Court has cited the Hecker case, and --

THE COURT: Well, I think that's a little different situation with Miss Arvizo.

MR. SANGER: Well, what I was going to say with regard to -- with regard to the cases -- and I don't know what the Court meant. Maybe I should find out what you just meant by that remark, if I may.

THE COURT: I think we're dealing with a little different situation here. But what did you want to say about the case?

MR. SANGER: I'm trying to guess what the Court is getting at.

What I was going to say was that this is a 7306

witness called by the prosecution. It's not a complaining witness. And maybe that's the distinction the Court was looking at.
THE COURT: (Nods head up and down.)
MR. SANGER: Okay. This is a witness they want to call. None of the cases that are cited by the prosecution really stand for the proposition that they're advancing. It is true that in the leading case that they cite, the defense sought to call a witness just to have the witness take the Fifth in front of the jury to gain that kind of impact. And that's not what we're talking about here. We're talking about the prosecution calling a witness and being immunized from confrontation. One of the things Hecker said, and I'm not conceding this at all. I think if these witnesses, these two witnesses -- if we could address both at the same time, but certainly we can start with this one and equally it applies to Miss Montgomery. If they're going to take the Fifth, then they take the Fifth out of the presence of the jury and they go home, and that's it.
I would point out that Hecker said, which is the case the Court cited to us, that one of the remedies there, in a different situation admittedly, but one of the remedies there would be to allow somebody to take the Fifth and to have adverse comment made about that. Because again, it's -- as 7307

I argued in the Arvizo matter, these people are not stakeholders. And certainly these two witnesses we're now talking about are not stakeholders. If Miss Arvizo had any stake, it's the mother of a complaining witness, I mean maybe.

But these people have absolutely no stake, and their asserting the Fifth Amendment should not hurt them in their own affairs, if they were suing somebody or if they were being prosecuted and they're defending their own case, but there's no reason why they should be immunized from confrontation in this case, and there's no interest that they can assert --

THE COURT: Let's hear from his attorney.

MR. SANGER: All right. Thank you.

THE COURT: Would you state your name, please?

MR. SEGAL: Yes. Good afternoon. My name is Jeff Segal, and I represent Chris Carter. Mr. Carter has no dog in this fight. If he is called by the People or by Mr. Jackson, he is prepared to testify truthfully, so long as he can do that without risking self-incrimination. He is charged with very serious crimes in Las Vegas. He denies that he was involved in committing those crimes. And the issue in all of those crimes is the identity of the perpetrator.

So I have instructed Mr. Carter to exercise 7308

his Fifth Amendment privilege with respect to any questioning about the alleged criminal actions in the State of Nevada, or anything that might tend to implicate him in any of those crimes.
With respect to whether he does that in front of the jury, or outside the presence of the jury, that's for the parties in this litigation to address. So long as Mr. Carter's rights are fully protected, you know, I have no other point to make on that issue.
So he is prepared to testify with respect to his knowledge and involvement with Mr. Jackson, but he cannot do that if it means self-incrimination.
So he will be -- he will be asserting his Fifth Amendment privilege.
With respect to any agreement for leniency or expectation for leniency, I certainly don't have that expectation. There is no agreement with either Mr. Sneddon's office or with any of the prosecutors in Nevada. And I have no expectation that there would be any leniency down the road.
THE COURT: If he -- what if -- if he was asked the simple question whether or not charges are pending against him, in other words, not whether he committed them, but, "Is it true you're charged with" -- I don't know what it is, robbery, or whatever it is, in Nevada.
MR. SEGAL: Your Honor, I believe in an 7309

abundance of caution that he should not be required to answer even those questions. I think there may be another way to introduce that evidence before the jury, either by stipulation of the parties, or by the introduction of some kind of court record, but I would strongly prefer that Mr. Carter is not asked those questions, even that question, in front of the jury. I have no objection to that being admitted in court. I have no standing to object to that. But I would instruct him to exercise his Fifth Amendment privilege even as it relates to what crimes he's charged with in Nevada.

THE COURT: All right. Anything further by either side?

MR. SANGER: If I could just clarify one thing, just to say we object in Santa Barbara to analogies of dogs in fights, I think, but we might say no horse in this race.

However, there is a horse that this witness does have in this race, and he's charged with federal offenses. State offenses would be the same, but federal offenses in particular, the 5K1 downward departure is something that a person would argue if they came to sentencing, and there's no question that to be competent, as I'm sure Mr. Segal is, he would argue for a 5K1 downward departure under the United States sentencing guidelines. And the guidelines, as the Court is probably aware, have 7310

1 really been --
2 THE COURT: Held unconstitutional.
3 MR. SANGER: More or less. Under Booker and
4 Fanfan, the two cases Booker and Fanfan, the
5 guidelines have been opened up because they're found
6 to be guidelines now, which was, actually, the
7 title, as to opposed to actual requirements, and so
8 therefore any kind of mitigation can be brought
9 before the Court and would be brought before the
10 Court. And I would actually expect Mr. Segal, as I
11 believe he's the lawyer on the federal case --
12 Is that correct?
13 MR. SEGAL: In both cases.
14 MR. SANGER: In both cases, okay.
15 I would expect Mr. Segal, as a federal
16 practitioner, unless he's confident he's just going
17 to win the case, he'd be looking, as we all would in
18 a case like that, to the consequences at the time of
19 sentencing and would be looking to present evidence
20 of mitigation.
21 So there is a horse in the race or a dog in
22 the fight, if we take the analogy that was used by
23 Mr. Segal, and we need to have the opportunity to
24 confront this person in front of the jury if he's
25 going to testify, and say, Look, it's a fact that
26 you know that you're -- that you're facing serious
27 charges, and that's going to color your testimony,
28 isn't it? and go into that kind of a 7311

cross-examination with him.
Simply sanitizing it and saying, well, you can bring in evidence through a docket or something, or from some other witness that, yes, he's facing these charges doesn't do what cross-examination does. And the cases we cited before on cross-examination, it is a -- it is a very effective tool in getting to the heart of somebody's testimony and allowing the jury, the contemporaneous trier of fact, to see how that person performs and how things like that might affect their assessment of credibility.
So I'd submit as to this witness and also the other one, to save some time, if it does, that either they take the Fifth or they don't, which is certainly their right. But if they take the Fifth as to anything, then they should be precluded from testifying as to everything.
Thank you.
THE COURT: Anything further, Mr. Sneddon?
MR. SNEDDON: No. I guess my only comment would be -- I guess I shouldn't have said "No." I should have said "Yes."
I do have a brief comment, and my brief comment to the Court is, first of all, I haven't heard any reason why the two cases we cited, the Bento case, B-e-n-t-o, and the Dyer case, D-y-e-r, don't apply to this situation. And I just can't sit 7312

there and let it go unsaid that Mr. Jackson's not the first person in the world that's ever had a case where somebody comes in and claims the Fifth. That's why we have cases like this, and there's a lot of them on the dockets. And it's -- it's -- two of the three people were people associated with Mr. Jackson and we just happened to call them as witnesses. They're in our case, but they're associates of Mr. Jackson.

So I find it unfortunate that they have to do that, but I don't think that this -- this sin should be laid at our doorstep. It's just a fact that we have to bring to the Court's attention, because counsel representing those people have indicated in their representation of them they have to do it. It's that simple.

THE COURT: All right. What I'm going to do is allow him to testify, and I'm going to preclude the defense from inquiring into the circumstances of the crimes in Nevada for which Mr. Carter is charged.

I will allow, through some form, the fact that he is -- that he has those pending charges in Nevada and that he is incarcerated. How we tell the jury that I'm open to suggestion.

MR. SANGER: Could I address that issue?

THE COURT: Yes.

MR. SNEDDON: I'll make it very simple, stop 7313

Mr. Sanger from addressing the Court. I'll be willing to work out a stipulation with Mr. Sanger which would satisfy the Court. If we can't, then we'll come back to the Court.

MR. SANGER: I think we should be allowed to ask the question, not -- and not in an excessive fashion, but ask two or three direct questions to the witness, and he should -- if he wishes to take the Fifth, he should take the Fifth in front of the jury, and it should be subject to adverse comment under the Hecker case.

THE COURT: Well, I've already ruled that you're not to ask him any questions to force him to make a claim of the Fifth Amendment in front of the jury. And that suggestion that you turn around and do that flies in the face of the ruling I just made.

MR. SANGER: I apologize. I didn't understand that. So --

THE COURT: I'll give you an opportunity to work something out. If not, I'll do something, tell them myself personally.

I'll give you time. You can tell me Monday whether you've reached agreement on how he's -- how the jury is to be advised.

The next item is the -- shall we take up the other claim of privilege? That's the plaintiff's motion in limine to exclude evidence under the surrender flight. Is that -- 7314

MR. NICOLA: Should I bring the witness in, Your Honor, or would you like to hear argument first?
THE COURT: The witness isn't here? Maybe we should bring her. Is she close?
MR. NICOLA: She's right outside.
THE COURT: Okay. Let's have her come in.
MR. NICOLA: Should she take the stand, Your Honor?
THE COURT: No. Let's see here.
You're Miss Montgomery?
MS. MONTGOMERY: Right.
THE COURT: She's right there?
MR. NICOLA: She's right there.
THE COURT: Why don't you step forward, please.
You don't have counsel with you, do you?
MS. MONTGOMERY: No.
THE COURT: It's my understanding that -- well, before I state what my understanding is, do you wish -- I'll have counsel address me.
Do you want to address me on the issue?
MR. NICOLA: If I may, Your Honor.
THE COURT: You can sit down for a second.
I'm sorry.
MR. NICOLA: We filed this motion with two alternatives. One is to preclude any mention of the November 20th, 2003, flight, because it's simply irrelevant. What happened on that flight and the 7315

conduct of anybody involved with that flight or thereafter is simply not relevant to any issue that Miss Montgomery will testify to or any other issue in this case.
And insofar as the defense has certainly made it a habit to bring things up in their cross-examination which are marginally relevant to attack credibility of witnesses, this is a particularly thorny issue, because Ms. Montgomery has, in fact, been advised by her attorney not to answer any questions with respect to conduct arising out of the November 20th surrender flight, as we've called it. And her attorney may have many reasons for that. To presume it's kind of guilty conscience or knowledge of guilt or anything adverse is not fair. And certainly the courts have said that's not a proper inference to draw.
With respect to perhaps drawing an analogy as to the previous motion the Court heard, we --
THE COURT: Would you -- would you come forward, please?
You know what I'd like to do, I don't know what instructions your counsel's given you, but what I would like to do is have you sworn and have you state under oath that you intend to invoke the Fifth Amendment so there's no question about what you're doing. That's the only reason.
MR. NICOLA: I appreciate that, Your Honor. 7316

THE COURT: Would you swear the witness, please?

CYNTHIA C. MONTGOMERY
Having been sworn, testified as follows:

THE WITNESS: I do.
THE CLERK: Please state and spell your name for the record.
THE WITNESS: Cynthia C. Montgomery, C-y-n-t-h-i-a, C., Montgomery, M-o-n-t-g-o-m-e-r-y.
THE CLERK: Thank you.

EXAMINATION
BY THE COURT:
Q. Miss Montgomery, if any questions were asked to you concerning the travel on charter jets and the booking of flights by Michael Jackson or Michael Jackson's companies, what would your answer be? Would you be claiming the Fifth Amendment?
MR. NICOLA: I don't think she understood the question, Your Honor.
Q. BY THE COURT: All right. I'm just asking you a general question. If you were questioned at all about arranging chartered flights for Michael Jackson or his company during the time period from, let's say, 2002 through 2004, would you claim the Fifth Amendment? 7317

A. Um, only on November 20th of 2003.
Q. Only on that --
A. Correct.
Q. -- flight?
Is that the flight you were going to
question her about?
MR. NICOLA: No. That's the flight that we
wish to exclude from evidence under 352 and
relevance.
THE COURT: Okay. That's the flight you're
going to question her about?
MR. SANGER: Yes, Your Honor, and all the
circumstances surrounding it, including the lawsuit,
her cross-complaint against Mr. Jackson that she is
litigating for money, and the fact that she came
forward and offered to be an informant, a
confidential informant, and brought forth a friend
of hers who she offered as a confidential informant,
who in fact was enlisted by the police to
surreptitiously tape-record phone calls.
That kind of cooperation, that level of
cooperation was, we believe, directly dictated by
the fact that she's under federal investigation and
engaged in a lawsuit surrounding the same facts both
as a defendant and as a cross-complainant.
THE COURT: What's the -- what are you
calling her for? What is the purpose of the
testimony that you wish -- 7318

MR. NICOLA: Well, as a general proffer, Your Honor, Ms. Montgomery was the defendant's travel coordinator for a period of some time, during the relevant period of time. Say late 2002 through approximately September, she arranged private flights for Mr. Jackson. She's aware of the people that he flew with and continued to fly with after the conduct alleged in the 288 counts, which is circumstantial evidence of a continuing conspiracy. She's going to offer testimony about Count 1, with respect to the Arvizos getting, through Mr. Schaffel, short-set one-way tickets to Brazil, with a date to leave of nearly immediately after the rebuttal video was filmed, things of that nature. With respect to the November 20th, 2003, flight, we didn't intend to introduce at all or ask her any questions at all. And we understand that the existence of a civil lawsuit is certainly something that the defense can argue creates a bias within the witness as she testifies. However, the underlying facts of the lawsuit appear to be largely irrelevant. It's almost like a witness -- mind you, there are no charges. She has not been charged. There's no evidence that she's being actively investigated, only that an investigation is being conducted. Under those circumstances, it's akin to asking a witness, Isn't it true that you're being 7319

audited by the IRS? And the implication there is that you violated some kind of federal tax statute. It's just simply not relevant.

MR. SANGER: Interesting. Because this actually is a progression along a continuum. Your Honor said the Janet Arvizo was different than Chris Carter, and Chris Carter is actually different than this, so I suppose this tests the hypothesis here. In this particular case, Mr. Sneddon said two of the three witnesses -- I forgot what his words were. Two of the three witnesses are associates of Michael Jackson, something like that. This witness is not in any sense an associate of Michael Jackson. She was in business for herself. But more importantly, Michael Jackson is the victim in her criminal activity. The FBI has an active investigation. They've interviewed people, and they've seized evidence indicating that Xtra Jet and Miss Montgomery have engaged in --

MR. NICOLA: Your Honor, I'm going to object at this point. I don't think Mr. Sanger's doing this for anybody's benefit except for the people behind us. If he has --

MR. SANGER: That's absolutely not true, and if there's a legal objection --

THE COURT: The objection is overruled.

MR. SANGER: All right. She -- they surreptitiously videotaped Michael Jackson and 7320

attempted to sell the tape, and that's how they got caught, and Michael Jackson is the victim of this person.
So we really have a continuum here of some sort, or maybe it comes back to a circle, depending on how you look at Janet Arvizo's activities. But certainly here he's -- he is a victim. And if Michael Jackson, the victim of this conduct of surreptitiously taping and attempting to sell that tape, if Mr. Jackson were convicted in this case with the help of Miss Montgomery, it would certainly help her in her civil case where she has filed a cross-complaint against Mr. Jackson.
Excuse me one second.
Yes.
(Off-the-record discussion held at counsel table.)
MR. SANGER: I mean, was that not clear?
I'm sorry. I'm sorry, it's the end of the day.
Mr. Mesereau is saying the Court understands that Mr. Jackson in the civil case is the plaintiff.
I think I said this. And I think the Court knows it. He's the plaintiff.
THE COURT: I understand.
MR. SANGER: He has sued Xtra Jet. And she, Miss Montgomery, has cross-complained against Mr. Michael Jackson.
The point is, she has a big stake in the 7321

outcome of this case because it would directly impact her civil case and may or may not impact the underlying criminal case.

But all of that behavior on the part of Miss Montgomery and Xtra Jet also gives a tremendous amount of content and context, both content and context, to her activities in volunteering, going to the police, the sheriff here in Santa Barbara and volunteering that she had information. Her information that she offered was primarily hearsay, double or triple hearsay, and she offered to be helpful and she was considered to be a confidential informant for about eight or nine months.

The Court may remember that we complained that we didn't get discovery about Miss Montgomery and about Mr. Provencio that they had compiled in January, and we didn't get it until October or something. And the government got up and said, "Well, we didn't give that to you because they were confidential informants. We didn't want to tell you what they were doing."

They came forward, and she really didn't have much firsthand or anything firsthand, but she then got the government in contact with Mr. Provencio, who she continued to contact. And he eventually was told to tape-record conversations with other people, not with Mr. Jackson, so -- I don't think he knew Mr. Jackson. But that was -- 7322

that was being used, and in fact, they're seeking to call him as another witness in this case.
So I think we have to have the right to confront and cross-examine this woman on her bias. She's involved in litigation. And the underlying basis of the litigation is the illegal not only taping of Mr. Jackson as a celebrity and making him a victim of this, but attempting to sell that tape.
THE COURT: Well, the case is -- this is a different situation than the other two, as you pointed out. Each are distinctly different approaches. And the -- in this case, the Court's going to exclude the testimony entirely. I believe that the District Attorney has the ability to produce the evidence that she would testify to through other means, and the claim of the privilege here would be a total deprivation of the right to cross-examination.
So her testimony is ordered excluded based on her claim of privilege under the Fifth Amendment.
Let's see, we're through with our day. There's one motion left. I guess we could take that up Monday morning, unless everyone wants to meet tomorrow.
MR. SANGER: I think there are two.
THE COURT: Hold up your hand if you want to meet tomorrow.
My bailiff is holding up.... 7323

THE COURT: Oh, I skipped 9 and 10, too.
I don't want to go on now because the court reporter has to do her daily transcript, and we're all -- I guess 9 and 10 --
MR. SANGER: I think there's 9, 10 and 12.
THE COURT: Yeah, on 9 we're going to have a longer hearing. I need more information on those documents. So I'm not -- I wouldn't -- that's not a short issue.
The admissibility of the state of Gavin's testimony by Chris Carter, if I could have resolved that by saying no, we wouldn't have had to deal with the Fifth Amendment problem. So you know my ruling on the admissibility of that statement is that he can give that evidence. But I think we'll take up the other issues on Monday, then.
All right. Court's in recess.
MR. SANGER: Thank you.
(The proceedings adjourned at 2:35 p.m.)
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REPORTER'S CERTIFICATE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304, Official Court Reporter, do hereby certify: That the foregoing pages 7167 through 7324 contain a true and correct transcript of the proceedings had in the within and above-entitled matter as by me taken down in shorthand writing at said proceedings on April 21, 2005, and thereafter reduced to typewriting by computer-aided transcription under my direction.

DATED: Santa Maria, California, April 21, 2005.

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
OFFICIAL COURT REPORTER